RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

HEARINGS

BEFORE THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

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RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

WEDNESDAY, APRIL 19, 1989

House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC.

The committee met, pursuant to call, at 10:00 a.m., in room 311, Cannon House Office Building, Hon. William D. Ford (chairman of the committee) presiding.

Mr. Ford. The hearing will come to order.

I would like to welcome everyone here this morning to the first of what we expect to be a series of hearings primarily on the recommendations of the National Commission on the Public Service. We are pleased to have as our witnesses today the Honorable Paul Volcker, chairman of the commission, together with commission members, Norman Ornstein, Robert Schaetzel, Elmer Staats, and the executive director of the commission, Bruce Laingen.

The decibel level of the frequently referred to "quiet crisis" in government is actually reaching a deafening level when it comes to us. This committee is very grateful to have the benefit of the report entitled, "Leadership for America: Rebuilding the Public Service", prepared by this commission. It is a first for us in considering an area that for too long has been the victim of budgetary decisions rather than good government policy decisions.

While it may sound ambitious, we are hoping that the 101st Congress, which celebrated its anniversary and which is going to be celebrating the 200th anniversary of the presidency shortly, would now take a look to see where we have brought ourselves in providing government service through the people who are employed by the government. We must determine where we are headed and whether or not we need to take what might be considered by some people as dramatic action to protect the people of this country through protecting the public service the government is intended to provide.

We are increasingly aware of the difficulty in attracting and retaining talented people to run government programs; to protect our borders; insure safe air travel; manage the cleanup of hazardous wastes; protect the stability of our financial markets; conduct research in health and sciences; and ensure the dispensing of equal justice under law.

Today's hearing marks the beginning of this committee's efforts to amplify the importance of sustaining public service for those who have yet to hear the shrill alarm of the crisis. It also marks the beginning of the committee's attempt to better define the problems which exist and devise appropriate responses.

The National Commission on the Public Service, a private, nonprofit organization chaired by former Federal Reserve Board Chairman Paul Volcker, has undertaken a laudable effort to shine the public spotlight on the continuing erosion in the attractiveness of public service.

Last month, the commission issued its report entitled, "Leadership For America: Rebuilding the Public Service". In that report, it put the crisis in perspective, set forth goals which we should strive to meet, and suggested specific means for achieving those goals. It is that report which will serve as the focus for the initial series of hearings which we begin today.

At the outset, I think it important to stress that while much debate has focused on the role which compensation plays in the government's ability to recruit and retain, the recommendations of the commission are much broader in scope than a simple plug for a pay raise for executives, judges, or anyone else. Rebuilding the public's trust, rebuilding student interest, simplifying the recruiting process, and providing the training to succeed are but a few of the goals and recommendations included in the commission's report.

Mr. Gilman.

Mr. **Gilman**. Thank you, Mr. Chairman. I will be brief.

I want to commend you, Mr. Chairman, for rescheduling this important hearing as the first in a series of recommendations and proposals of the National Commission on the Public Service. The commission is chaired by Paul Volcker, the distinguished former Federal Reserve Chairman. In its report, "Leadership for America," it refocuses the spotlight on an area which has been clouded by the broadsides of politicians who seemingly take a great delight in bashing the federal bureaucracy. Mr. Volcker and his distinguished colleagues have articulated clearly and effectively in their 64-page report, the vital and honorable services performed by our federal workers.

In my estimation, the commission scored a bull's eye when it said too many of our most talented public servants are ready to leave, and some have already left our employment and too few of our brightest young people are being attracted to take their places.

In exploring the diverse proposals of the commission, I know we will be emphasizing job performance, ways to retain talented employees, and ways to be competitive in the recruitment of new and needed personnel.

I look forward to hearing the views of the variety of experts who are going to be appearing before this committee in today's hearing and in the days ahead.

Thank you, Mr. Chairman.

Mr. **Ford**. Thank you.

Mr. McCloskey.

Mr. **McCloskey**. I have no statement, Mr. Chairman.

Mr. **Ford**. Mr. Horton.

Mr. **Horton**. Mr. Chairman, I thank you for giving me this opportunity for making an opening statement. I would like to ask unanimous consent to place it in the record at this point.

Mr. **Ford**. Without objection, so ordered.

[The statement of Hon. Frank Horton follows:]

OPENING STATEMENT OF HON. FRANK HORTON

Mr. Chairman, I join you in welcoming the chairman of the National Commission on the Public Service, Mr. Paul Volcker, to the committee today. I commend you Mr. Chairman for scheduling three days of hearings for the committee to study the recommendations of Mr. Volcker's commission. The hearings will help to build public awareness of the "quiet crisis" in government.

As a firm believer in the ideal that government needs to attract and retain the best and brightest talent possible I commend Mr. Volcker for his dedication to strengthening the morale, efficiency, and the salary of government employees.

It is of great importance to our entire nation that the Federal Government be served by career servants of the highest caliber. I am highly complimentary of the current Federal workforce. They have been doing an outstanding job despite numerous constraints on pay and benefits. However, I am increasingly concerned about reports of the erosion of the quality of the Federal workforce. I believe that we in the Congress must work together to retain our talented civil servants.

This committee has done outstanding work on behalf of Federal employees. We have enacted legislation to prevent reprisals against Federal employees who blow the whistle on waste, fraud, and abuse in the Federal Government. The act, the Whistleblower Protection Act of 1989, was the culmination of over five years of extensive negotiations and represents a strong victory for Federal employees. Earlier this week the House overwhelmingly adopted our bill to allow Federal employees the opportunity to exercise their constitutional right of full political participation. I am optimistic that the Senate will act expeditiously on the Hatch Act reform bill, H.R. 20.

Again, I commend the work of the Volcker commission. While I share the commission members' conviction of rebuilding an effective, principled, and effective public service, I do have reservations about a number of their recommendations. I look forward to hearing from Mr. Volcker and some of the other distinguished witnesses we have scheduled to appear during the three days of hearings.

Mr. Chairman, I look forward to working with you and other committee members to analyze and hopefully take action on some recommendations of the Volcker Commission.

Mr. **HORTON**. I would like to join with you and the other members of the committee in welcoming Mr. Volcker and the members of the commission. I particularly want to make reference to his past service and also point out that for some years his mother lived in my district in the town of Lyons. He is highly regarded in my area as he is across the nation.

I think this report is a very important contribution to the public awareness of the quiet crisis, I am not sure how quiet it is, that we have in the government today.

I also want to single out Elmer Staats who served for approximately 15 years as the Comptroller General of the United States. In that capacity, I worked with him in my role as the ranking minority member of the Government Operations Committee on many occasions. I have been very close to him personally because he served with me on the Procurement Commission and subsequently on the Paper Works Commission.

I know that he has brought a lot of his ability to the commission report. I do want to indicate we are very anxious to have their testimony and, Mr. Chairman, I want to join with all of you in welcoming them and thanking them for their dedication to this subject of the efficiency and the morale of the federal employees and in particular the judiciary.

Thank you.

Mr. **FORD**. Thank you.

Mrs. Schroeder.

Mrs. **Schroeder**. I have no statement other than to welcome the distinguished group and thank them so much for coming and for all their hard work.

Mr. **Ford**. Mrs. Morella.

Mrs. **Morella**. Thank you, Mr. Chairman.

I have been looking forward to this day, the beginning of the hearings on what has become a crisis. I have an opening statement I would like to have permission to insert in the record.

Mr. **Ford**. Without objection.

[The statement of the Hon. Constance Morella follows:]

STATEMENT OF HON. CONSTANCE A. MORELLA

Mr. Chairman, thank you for holding this important hearing on the recommendations of the Volcker Commission. I also want to commend Chairman Volcker and the National Commission on the Public Service for the thorough evaluation of the dilemma facing the Government in terms of recruiting and retaining highly skilled employees and the morale of those who still serve in the public sector.

It is not over-dramatic to say that we are past the "quiet crisis" stage in the Federal sector. Scientists and engineers are deserting the Government and, increasingly, the most promising graduates are unwilling to replace them. The reason for this "brain drain" is sufficiently clear—the vast gap between Federal and private salaries at every level is just one of the problems. Though the challenge and activism of public service are incentives to be a government employee, there are too many "Federal disincentives" which have a negative impact on recruiting and retaining employees. Benefits for the Federal retiree have eroded during the past decade. An undue burden has been placed on the Federal workforce and retirees in order to balance the budget. This is false economy—penny-wise and pound-foolish.

We cannot balance the budget this way. We must start paying adequate salaries to retain and recruit employees for prime Government jobs—we cannot currently attract scientists for the National Aeronautics and Space Administration because the salary differential between the public and private sector is over 88 percent. How can the budget be balanced if the same jobs are contracted out to the private sector? Private sector salaries are not capped at the Federal level. Often, the private contractual employee and the Federal employee work at similar projects at salaries that are enormously disparate. At this time, 85 percent of NASA money is out on contract.

Mr. Chairman, the Federal Government is a nonprofit organization. Our research is done at cost and is available for the good of the Nation. In contrast, when the Government contracts with the private sector, the payment to that company includes a profit and, often payment to their stockholders.

Dr. Noel Hinners, Associate Deputy Administrator of the National Aeronautics and Space Administration, testified that, "contracting out for basic functions of a government agency is also having a negative impact on us as we find ourselves, our civil servants, side by side with contractors doing the same function at larger salaries. The contractors now increasingly are able to supply some of the same excitement and benefits that our agency used to supply rather exclusively."

The Nation loses when the Federal Government loses a valued senior scientist, researcher or judge. We cannot allow the Nation's research in AIDS, cancer, space exploration or environment to be shortchanged because we failed to set appropriate pay standards. We cannot afford to have inexperienced judges on the bench hearing complicated cases and making decisions which affect securities and exchange, our economy, our environment and having those decisions appealed to higher courts. Many judges—and critical members on our Government research teams—cannot wait for the next "Quad Comm" recommendations, four years from now.

Mr. Chairman, my most immediate concern is for those in the Federal Government who are at the top of their professional ladder, yet are paid at the entry level of practicing lawyers, economists, doctors and scientists. Their expertise, management skills and authority far exceed their peers in the private sector at that pay level, yet we have not seen fit to compensate them for their skills, performance and duties.

Salaries for Federal executives are significantly lower than salaries earned in State and local government. Indeed, they are considerably lower than salaries earned by heads of nonprofit organizations. As a matter of fact, twenty-four percent of the 1986 and 1987 winners of the "Presidential Rank Award of Distinguished Executive" left Government service for other positions.

Mr. Chairman, this hearing will make the public aware of the great discrepancy which exists between the public and private sector. Also, Mr. Chairman, since I introduced legislation to provide a pay raise for those at the highly skilled upper levels in research and management, I have become aware of many high level employees who would not be affected by the pay raise—the public law (P.L.) employees, the scientific and technical (S.T.) employees, the administrative judiciary etc. I hope that the Office of Personnel Management and the Department of Defense will provide a comprehensive list of these specialists in supergrades who are not in the competitive salary schedule because of the nature of their responsibilities, such as those in quasi-judicial positions, or because of the creation of a scientific position by statute. They too are deserving of an adequate pay raise. My bill, H.R. 1322 also provides for a study to compare pay rates of the supergrades with the Senior Executive Service.

Public service is an honorable profession. However, a public servant lives under constant scrutiny and the risk of his or her reputation. In the world of investments and banking and in the private sector, if you take a big risk, you may get a big return or interest as an incentive. This is not the case in the Federal sector. We cannot attract and keep big talent for less than the going rate. Undoubtedly, people do not join public service to become wealthy, but they should not be denied the right to provide adequately for their families.

As you know, Mr. Chairman, I represent a large percentage of the senior government workforce. I also have a number of specialized institutes in my Eight District of Maryland, of which I am extraordinarily proud. However, my interest in adequate compensation reaches beyond my district and my constituency. I am interested because our Nation benefits when we have dedicated, talented, qualified people in positions of leadership in government. We are a highly talented and diverse nation. We must recruit and retain the highest calibre of employees in the public sector and bring Federal pay scales in line with comparable private sector jobs. We must lift the morale of the Federal employee and make the public sector job market competitive and desirable.

Mr. Chairman, I look forward to working with you and this committee toward reaching the goals and recommendations provided by the Volcker Commission.

Mrs. **Morella**. I do look forward to hearing the comments of the committee. I have had an opportunity to scan your report. I certainly do believe that it is a fallacy to think that a government governs best that pays the least. I realize that is not the only part of the recommendations that you have come out with, but I certainly look forward to hearing from you about all of them and hoping that we will, in this committee, be able to implement the recommendations.

So, I thank you, Mr. Chairman. I certainly thank the chairman of the commission and the members of the commission who are here and the executive director.

Thank you.

Mr. **Ford**. Mr. Kanjorski.

Mr. **Kanjorski**. I have no statement.

Mr. **Ford**. Mr. Ackerman.

Mr. **Ackerman**. I want to welcome the chairman and his distinguished associates and I ask unanimous consent to put my opening statement in the record.

Mr. **Ford**. Without objection.

[The statement follows. Also included is the statement of Congressman de Lugo.]

Statement of Hon. Gary L. Ackerman

I am pleased to participate in these hearings today. The National Commission on the Public Service has provided this committee and the public with the framework of a constructive national debate on the current and future state of our public service.

As the commission rightly points out, the Federal civil service has too often been the target of attack by candidates for political office. Fortunately, last year's campaign was a healthy departure from that practice. Both the President and the Congress must take the lead in educating the American public about the value of Federal service.

I am also pleased that the commission has recommended that the President and Congress give higher budget priority to civil service pay. As I am sure everyone knows, Federal employees and retirees have sacrificed $103 billion in pay and benefit cuts since 1976. The majority of those cuts have come from reductions in scheduled pay increases they should have received under the Pay Comparability Act of 1970.

Lastly, as Chairman of the Subcommittee on Compensation and Employee Benefits, I am interested in exploring further the commission's recommendation that civil service pay be set in a way which accounts for variations in the cost-of-living in different regions around the country. I look forward to working with the commission to fashion a Federal pay system which recognizes the value of the work performed by all Federal employees and which is sensitive to the various labor markets around the country. The subcommittee plans to begin hearings on this issue later this summer.

Mr. Chairman, I look forward to hearing today's testimony.

STATEMENT OF HON. RON DE LUGO

Good morning. I want to thank the chairman of the full committee, Mr. Ford, for holding this hearing on the recommendations in the report entitled, "Leadership for America: Rebuilding the Public Service," by the National Commission on the Public Service.

Mr. Chairman, we are very fortunate to have with us today the chairman of the commission, The Honorable Paul A. Volcker, former Chairman of the Board of Governors of the Federal Reserve System. Mr. Volcker served with distinction under 5 Presidents; most recently, as Chairman of the Federal Reserve System in a time of crisis.

Today's hearing on the "quiet crisis" in the Federal civil service is very timely. If the United States is to remain a leader in the world, as it is today, we must continue to attract the best and the brightest men and women in America.

President John F. Kennedy said, "Let the public service be a proud and lively career. And let every man and woman who works in any area of our National Government, in any branch, at any level, be able to say with pride and with honor in future years: 'I served the United States Government in that hour of our Nation's need.' " Those words are as prophetic today, as they were in 1963.

Mr. Chairman, 35 years ago I entered public office, not for money, but for the opportunity to contribute and serve my community, in this case the United States Virgin Islands. But today Mr. Chairman, money is a factor because of the soaring cost of living. It is becoming increasingly difficult to raise a family, and make ends meet, on one salary alone. So, we must do all that we can to offer challenging opportunities to the young men and women who want to enter public service, and also be concerned about their financial needs.

I look forward to hearing the testimony of the witnesses today, and I am certain that the testimony will be very insightful and informative.

Again, I thank the chairman of the full committee, Mr. Ford, for holding this hearing today.

Thank you Mr. Chairman.

Mr. FORD. We have already summarized the recommendations and separated them into about 15 specific areas where we thought they would best be handled.

Mr. Ackerman happens to be the lucky fellow who has one of the subcommittees who is going to take on the toughest part of your recommendations.

Mr. Sikorski, who we expect to be joining us soon, will be doing most of the rest of it. Those questions that involve compensation we expect to keep in the full committee with a task force for this purpose that was set up under our rules at the beginning of the Congress.

Now at this point, without objection, the prepared statements that have been presented by the members of the panel will be inserted in the record immediately preceding their comments.

I would invite you, Mr. Volcker, and members of the panel to proceed in any order you deem to be most appropriate. You may summarize, highlight, add to, or otherwise illuminate this record as you wish to make the case.

Mr. HORTON. Mr. Chairman, I would like to point out that many Members have already returned to their districts because the House is not in session today, tomorrow, or Friday, in conjunction with Passover.

But I think it is important to note that there are a substantial number of Members who have stayed and are in attendance here which indicates the interest in this subject.

Mr. FORD. I thank the gentleman for making that observation.

STATEMENT OF PAUL A. VOLCKER, CHAIRMAN, THE NATIONAL COMMISSION ON THE PUBLIC SERVICE, ACCOMPANIED BY THE FOLLOWING MEMBERS OF THE COMMISSION: NORMAN J. ORNSTEIN, J. ROBERT SCHAETZEL, AND ELMER B. STAATS; AND L. BRUCE LAINGEN, EXECUTIVE DIRECTOR

Mr. FORD. Mr. Volcker.

Mr. VOLCKER. Thank you, Mr. Chairman and members of the committee.

Let me say first of all following Mr. Horton's comment that we do appreciate particularly your initiative in scheduling these hearings and taking the leadership in examining our report and, of course, in considering a variety of issues bearing upon what you have all responded to as a developing crisis in this area.

You spoke about the problems of the public service over a period of 200 years of the republic. Mr. Chairman, I am reminded I once gave a speech. Somebody gave me figures, I think there were seven people in the Treasury Department 200 years ago. So some of the problems are similar but they seemed somewhat more manageable at the birth of the republic than they do now.

It is a large and complicated problem we are dealing with. I have been greatly supported in my own efforts by the members of the commission of which you have noted the three members we have today: Mr. Ornstein, Mr. Schaetzel, and Mr. Staats are representative of the kind of quality, talent, and analytic skills that were brought to this program.

On my right, Mr. Laingen has carried the burden of the full time staff members. I think for what we have in the report and in this effort, he deserves most of the recognition. Mr. Laitin sitting over there is an important member of the staff in trying to get the word out.

We have been studying this problem for about 18 months. We had something like 45 recommendations. We are not going to deal with every one of those this morning. I would like to emphasize a few themes that permeate the report and emphasize the point that our recommendations we consider are interrelated.

The pay issue is very controversial. It gets a lot of attention, not all of it positive. We think that is important but it is not the whole problem by a long shot. It would be misleading in terms of the way we have approached this problem, misleading in terms of what our report says, to place undue emphasis on one area such as pay.

I would like to read from my prepared statement about several themes that we have emphasized and which we think pervade the report and emphasize one or two of the specific recommendations away from the pay area.

The first theme that we emphasize is the importance of leadership. Leadership beginning with the President and the Congress in building or perhaps rebuilding an essential element of trust in government and respect for people in it.

Among other things that requires a senior official to set an example, set an example in ethical standards and performance that is going to motivate all of those who hold the public trust. The commission believes that government can maximize its effective performance if cabinet officers and agency heads are given greater flexibility to administer their organizations subject to clearly conveyed program guidelines from the President and oversight from the Congress. In short, we urge greater delegation of personnel authority and easier procedures for hiring and firing.

In this area we make special note of the need for the President to find ways to support and highlight the critical role that should be played by the Director of the Office of Personnel Management. In that connection, we recommend some delegation of that agency's important responsibilities but in a sense mundane responsibilities so that he or she can focus on policy guidelines and training and we would hope be a strong right arm for the President in that area.

We believe there should be a focus in a fundamental sense on the need for a stronger partnership and mutual understanding between the political appointees to whom the President delegates responsibility for implementation of his policies and the career personnel who provide the essential expertise, operational experience, and institutional memory. In that sensitive area, we call for a partial, but decisive, reversal of the trend extending over many years for an increased number of political appointees—now standing at over 3,000 in the executive branch. In the middle of the Depression there were 1,500. Fifteen or 20 years ago the responsibilities of government have not greatly increased over that period of time, but we have had a doubling in the number of political appointees. We have a chart attached to the statement that makes the point that tenure of these appointees is short. The chart cannot reflect the point that it is getting shorter but that is also true.

The conviction of the commission grew out of the experience of the members of the commission who had served in cabinet offices in past administrations. That conviction that unless in the sense of political appointees may mean better government, better communication, better responsiveness, and better program implementation.

A second major theme in the report is the need to protect and broaden the government's talent base. In the course of the commission's work we have been repeatedly reminded that government agencies themselves are not doing enough to attract enough of the best and brightest of our young people to public service. This is an area that needs long term efforts. It is going to require cooperation and efforts by educational institutions beginning in the primary and secondary schools to enhance student understanding of our government institutions and I might say we had a task force on this subject chaired by President Bok of Harvard and we had other university presidents on the commission.

It is an area we gave a great deal of attention. There is one concrete area which we hope the committee and the Congress generally will give particular attention to. We propose establishment of a presidential public service scholarship program. We visualize that as being targeted to 1,000 college students per year, a new class of 1,000 per year where they would be provided with rather full scholarships in return for a special commitment to spending some time in the public service after graduation.

We thought to attract attention to the program it might be broadly patterned on appointment to the military service academies.

You would have a competitive process culminating in nominations by Members of the Congress with special procedures to assure that minority candidates receive careful attention. I might say in that connection, the commission has been very much aware that demographics alone are going to require that the government better pay more attention to recruiting and retaining able minority people if we are going to proceed into the 21st century staffed the way that we should be in terms of the social problems of the nation as well as the immediate administrative problems of the government.

The third and final theme in the commission's report speaks of the bottom line, performance. The American people have a right to expect and demand first class performance and the highest ethical standards on the part of both the political appointees and the career services of government. And I might say elected officials as well. At the same time the commission believes that the government must provide what is necessary to attract and retain quality people—including, not least, pay systems that are both fair and competitive. High material rewards are not—and, indeed, should not be—the principal consideration for those in public service. We cannot, however, permit inequities in pay systems to undermine effective service. We sadly conclude that this is the case too often today. We attach a chart to the statement which shows you how pay generally has been lagging far behind increases in the cost of living in recent years.

We do have the conviction that even in a time of financial limitation, and nobody is more sensitive to those limitations than I, that pay for public servants needs to rank substantially higher in the ranks of budget priorities. We welcome the President's initiative that he has taken in recent days to raise the pay of federal judges. We believe pay raises are essential for other branches as well. We have not recommended that pay become fully competitive or anything approaching it with comparable private sector responsibilities, but as a matter of fairness and equity we do urge a phased restoration of purchasing power lost.

For white collar workers generally we recommend that Congress enact legislation to fix a system badly in need of repair. In many areas the federal pay is so far below the market that operational problems are evident—in evaluating tax returns, in controlling disease, in biomedical research, in defense technology. Yet another unfairness of the current system is that its effects are not the same for every area—even while federal pay rates are so low as to invite a crisis in some areas they are still competitive in others. Some flavor of this is reflected in the third chart attached to this statement. We conclude that a locality based system is needed to take into account different costs of living and labor market pressures. We conclude that after a lot of debate we have reached a stage where a locality based pay system is needed to take into account labor market pressures.

These and other recommendations in the report encompass a broad agenda, one that speaks of the need for a renewed sense of commitment by all Americans to the highest traditions of public service in this country. They can, however, only be a beginning, a step in the process that will require both a national debate and specific action on many counts.

We have been greatly encouraged by what President Bush has said about the important role of public servants of government and by the emphasis he has placed on the highest ethical standards at all levels. We are encouraged as well by the importance this committee has attached to these hearings and by the range of interest evident in the names of those you have asked to testify.

But we must not deceive ourselves. The problems facing the public service will not be easily or quickly overcome.

Success in rebuilding and maintaining the kind of public service this nation deserves and needs, will require a sustained and bipartisan commitment by both the President and Congress.

It will require an active and imaginative involvement by our secondary schools and colleges, as well as by other grass roots organizations spread through every city and town. It will certainly require the highest standards of performance by government workers themselves.

And it is the strong hope of this commission, including as it does in its membership several CEOs of major corporations, that the business community will add its voice to the need for action that will enhance government's capacity to provide the expertise and support that that community expects and deserves.

Mr. Chairman, the public service deserves a high and continuing place on the national agenda. To help keep it there, one of the commission's most important recommendations is that the President and Congress establish, similar to the Quadrennial Commission, an independent, non-partisan, tri-partite advisory council, one made up of representatives of the private sector as well as the executive and legislative branches of government. We suggest that such a council be called upon to monitor the whole state of the career public service and to make a bi-annual report to the President. The President, in turn, would forward the report to Congress together with his own comments, including such recommendations for change that he may have. Our objective, of course, is to encourage continuing attention to this problem so that we are not some decades into the future faced with a renewed quiet or noisy crisis in the public service. Our report concludes with an observation that seems to me to be incontestable. If government is to be responsive to the people's will and capable of meeting the challenges that lie ahead, it must be able to call upon a public service of skilled and committed men and women, broadly representative of our people, and working in a partnership of trust and understanding with able political leaders. The recommendations of this commission are designed to contribute to that purpose. I know that goal is shared by the members of this committee. The fondest wish of all my colleagues on the commission is that your debate and consideration will provide a vital spark needed to ignite needed effort and change.

Thank you, Mr. Chairman.

Mr. Chairman, I am sure my colleagues are ready to answer all your questions.

[The statement of Paul A. Volcker follows:]

STATEMENT OF HON. PAUL A. VOLCKER, CHAIRMAN, THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

Mr. Chairman and members of the committee, let me first thank you and the members of this committee for your courtesy in inviting my colleagues and me here this morning and for your demonstrated concern for maintaining the highest quality of effectiveness in the public services of government. We are most grateful for your decision to initiate a series of hearings on the report of the National Commission on the Public Service.

The Commission's report, "Leadership for America: Rebuilding the Public Service," was presented to President Bush, to Congress, and to the public on March 29. It culminates an effort by the Commission over an 18-month period to develop a series of recommendations that would, if implemented, help ensure the maintenance of an effective, principled, and energetic public service so essential to the process of good government.

The report is based on the work of the Commission's five task forces; Public Perceptions of the Career Services, Education and Training, Recruitment and Retention, Pay and Compensation, and the Relationship Between the Career Services and the Political Appointees. Each of these Task Forces was chaired by a Commission member, and their reports will also be made available to this Committee when they are released on April 25.

In that connection, I want to record my own appreciation to all the 36 members of the Commission, several of whom are here this morning, for their willingness to devote so much of their time to the Commission's work. These men and women reflect a broad spectrum of political views, and they differ on many questions of public policy. But they share a common conviction, as do the private foundations and corporations that have funded our work: a vigorous effort to enhance and maintain a capable and dedicated public service must rank high on the nation's agenda. As the report indicates, the members are in general agreement on the main elements of the report, although they may differ in emphasis and detail.

I want to emphasize that the proposals in the report—some 45 in total—are interrelated. Some may be more important, or of broader scope, than others. But it would be a misreading of our intention and conclusions to place undue emphasis on one area—such as pay—to the exclusion of others. In the jargon of an economist, a reasonable and equitable salary structure may be a necessary condition for maintaining an effective public service, but will not alone be sufficient. Many other important factors, beginning with basic questions of public trust and respect and a personal sense of challenge and accomplishment, are relevant.

Obviously, you do not have the time this morning to consider each of the recommendations of the Commission. Instead let me emphasize three central themes that pervade the report and then highlight several of the more important of our specific proposals.

The first theme emphasizes the importance of leadership—especially by the President and the Congress—in building the essential element of trust in government and respect for the people in it. That leadership requires that senior officials clearly set an example, in ethical standards and in performance, that in turn will motivate all who hold the public trust.

The Commission also believes that government can maximize its effective performance if Cabinet officers and agency heads are given greater flexibility to administer their organizations, subject to clearly conveyed program guidelines from the President and oversight from Congress. In short, we urge greater delegation of personnel authority and easier procedures for hiring and firing.

In this area we make special note of the need for the President to find ways to support and highlight the critical role that should be played by the Director of the Office of Personnel Management. We believe that delegation of some of that Agency's operating responsibilities and a greater focus on policy guidelines and on the crucial area of training would help maximize its effectiveness.

We also focus on the need for a stronger partnership and mutual understanding between the political appointees to whom the President delegates responsibility for implementation of his policies and the career personnel who provide the essential expertise, operational experience, and institutional memory. In that sensitive area, we call for a partial, but decisive, reversal of the trend extending over many years for an increased number of political appointees—now standing at over 3,000. Among other things, tenure of political appointees is short, as shown on an attached chart, and has been tending to get shorter. Our conviction, strongly shared by members of the Commission experienced in the senior levels of an Administration, is that in this area, less may mean better—better communication, better responsiveness, and better program implementation.

A second major theme in the report is the need to protect and broaden the government's talent base. In the course of the Commission's work we have been repeatedly reminded that government agencies themselves are not doing enough to attract enough of the best and brightest of our young people to public service. We emphasize that needed changes will require a long-term effort—requiring among other things efforts by the nation's educational institutions, beginning in primary and secondary schools, to enhance student understanding of our civic institutions and their operations.

I want to highlight one recommendation in this area to which we hope this committee and the Congress will give particular attention. We propose establishment of a Presidential Public Service Scholarship Program, targeted to 1,000 college students annually, for those willing to make a special commitment to the federal service. We suggest that admission to the program be broadly patterned on appointment to the military service academies; that is, a competitive process culminating in nomination by members of Congress—with special procedures to assure that minority candidates receive careful attention.

The third theme in the Commission's report speaks of the bottom line; that is that the American people have a right to expect and demand first class performance and the highest ethical standards on the part of both the political appointees and the career services of government. At the same time, the Commission believes that government must provide what is necessary to attract and retain quality people—including, not least, pay systems that are both fair and competitive. High material rewards are not—and, indeed, should not be—the principal consideration for those in public service. We cannot, however, permit inequities in pay systems to undermine effective service. We sadly conclude that this is the case too often today. One aspect is reflected in the second chart attached, showing pay lagging well behind increases in the consumer price index over the past decade.

Our recommendations in this area reflect the Commission's view that, even at a time of financial limitations, pay for the public servants of government must rank substantially higher in the range of government's budget priorities. We welcome the President's initiative in respect to raising the pay of Federal judges. We believe, however, that increases are essential for the other branches as well. At these senior levels, we have not recommended pay that is fully competitive, or anything approaching it, with comparable private sector responsibilities. But as a matter of fairness, we urge a phased restoration of purchasing power lost to inflation.

For the General Schedule, we recommend that Congress enact legislation to fix a system that is badly in need of repair. In many areas, Federal workers are paid so far below the market that operational problems are evident—in evaluating tax returns, in controlling disease, in biomedical research, in defense technology. Yet another unfairness of the current system is that its effects are not the same for every area—even while Federal pay rates are so low as to invite a crisis in some areas they are still competitive in others. Some flavor of this is reflected in the third chart attached to this statement. We conclude that a locality based system is needed to take into account different costs of living and labor market pressures.

Mr. Chairman, these and the other recommendations in this report encompass an admittedly broad agenda—one that speaks of the need for a renewed sense of commitment by all Americans to the highest traditions of public service in their country. They can, however, be only a beginning, a step in the process that will require both a national debate and specific action on many counts.

We have been greatly encouraged by what President Bush has said about the important role of public servants of government and by the emphasis he has placed on the highest ethical standards of all levels. We are encouraged as well by the importance this Committee has attached to these hearings and by the range of interest evident in the names of those you have asked to testify.

But we must not deceive ourselves. The problems facing the public service will not be easily or quickly overcome.

Success in rebuilding and maintaining the kind of public service this nation deserves and needs, will require a sustained and bipartisan commitment by both the President and Congress.

It will require an active and imaginative involvement by our secondary schools and colleges, as well as by other grass roots organizations spread through every city and town. It will certainly require the highest standards of performance by government workers themselves.

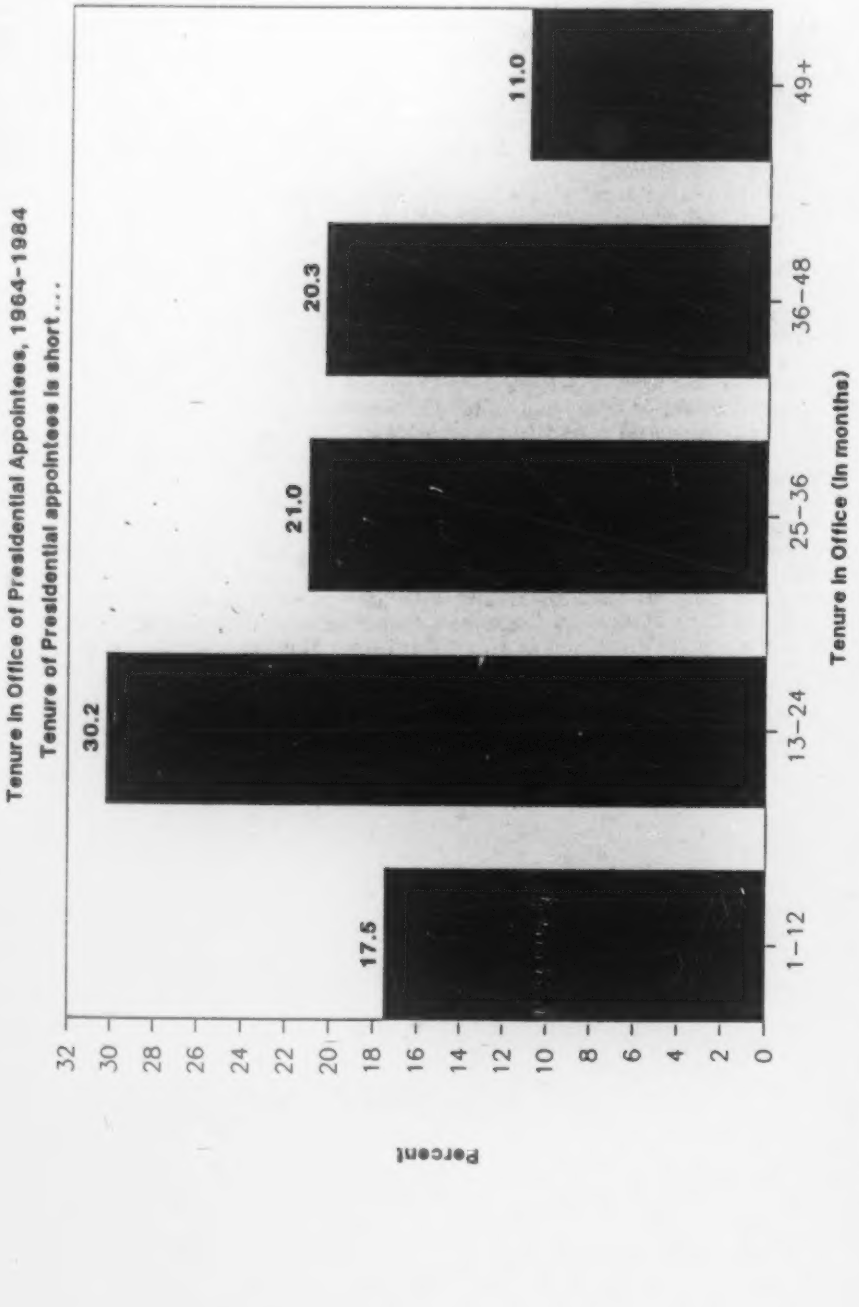
And it is the strong hope of this Commission, including as it does in its membership several CEO's of major corporations, that the business community will add its voice to the need for action that will enhance the government's capacity to provide the expertise and support that that community expects and deserves.

Mr. Chairman, the public service deserves a high and continuing place on the national agenda. To help keep it there, one of the Commission's most important recommendations is that the President and Congress establish an independent, non-partisan, tri-partite advisory council, one made up of representatives of the private sector as well as the executive and legislative branches of government. We suggest that such a council be called upon to monitor the whole state of the career public service and to make a bi-annual report to the President. The President, in turn, would forward the report to Congress together with his own comments, including such recommendations for change that he may have.

Our report concludes with an observation that seems to me incontestable. If government is to be responsive to the people's will and capable of meeting the challenges that lie ahead, it must be able to call upon a public service of skilled and committed men and women, broadly representative of our people, and working in a partnership of trust and understanding with able political leaders. The recommendations of this Commission are designed to contribute to that purpose. I know that goal is shared by the members of this Committee. The fondest wish of all my colleagues on the Commission is that your debate and consideration will provide a vital spark needed to ignite needed effort and change.

Thank you, Mr. Chairman.

Chart 1



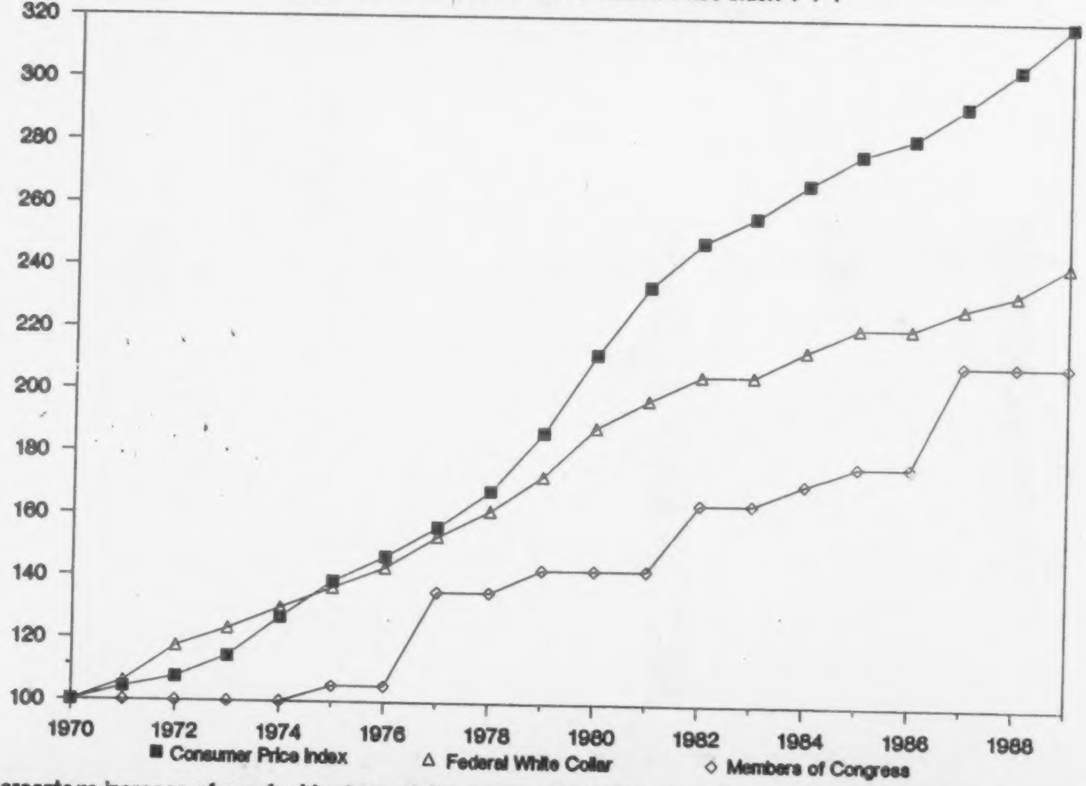
Tenure in Office of Presidential Appointees, 1964-1984

Tenure of Presidential appointees is short . . .

Source: National Academy of Public Administration, Presidential Appointee Project, Biographical Data Base, 1985.

Chart 2

Pay for Congressmen and federal white collar workers has fallen far behind the increases of the Consumer Price Index . . .

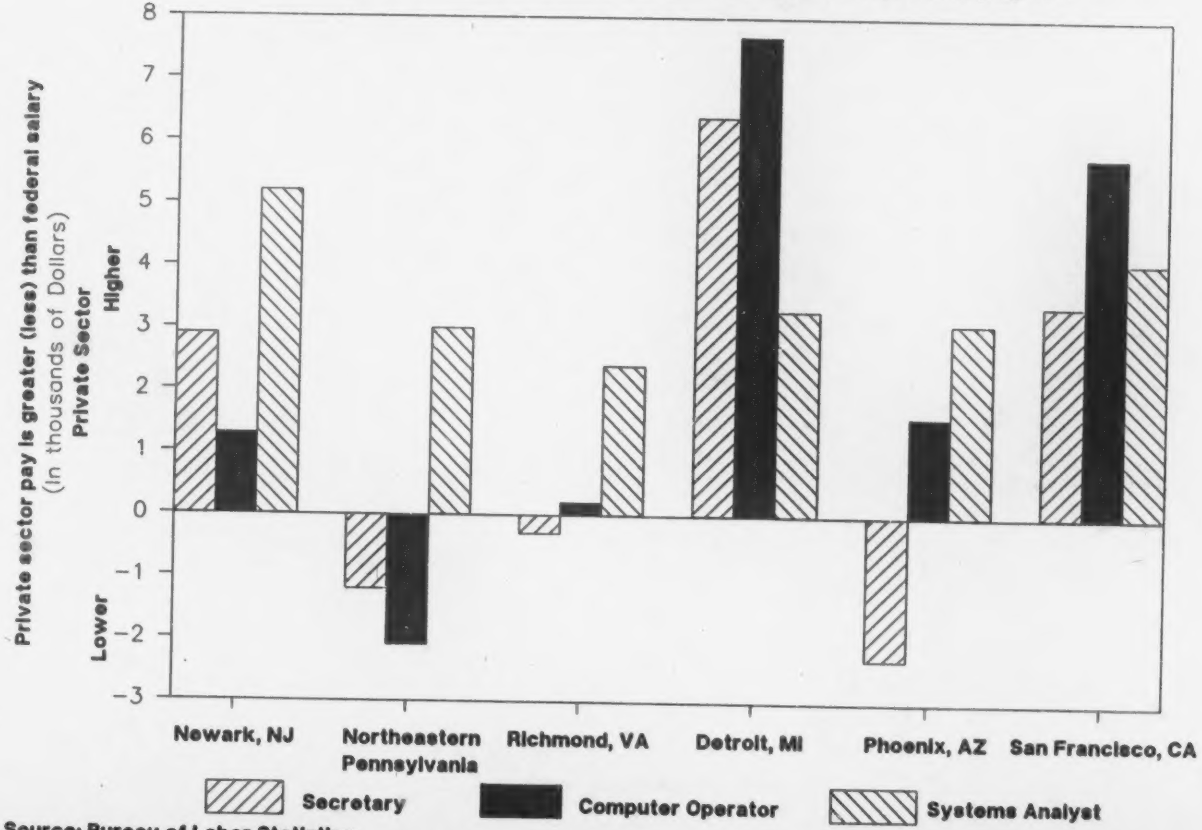


Change in percentage increase of pay for Members of Congress andfederal white collar, compared to increase in Consumer Price Index.

Source: Congressional Pay, Selected Wages and Pensions, and Social Security: Compared to CPI, 1969-1989, Congressional Research Service Report for Congress, (89-63 GOV), January 24, 1989.

Chart 3

Pay for federal white collar workers is low in some geographic areas and high in others in relation to private sector pay . . .



Source: Bureau of Labor Statistics

Mr. **Ford**. Thank you, Mr. Volcker.

We have had some discussions that led to my recommendation to the commission that we follow the course of action we have undertaken here today.

As I have studied your report, and out of the conversations I have had *with you and* members of your commission, as well as others who share our concerns, it appeared to me that if we started to proceed with individual pieces of legislation that dealt with any particular targeted population, such as the Congress, the judiciary or the top executives, that we would run the danger of focusing attention on that area of the government to the exclusion of the others which are equally important.

At the same time, I am clearly conscious of the fact that as these hearings go on, the first time there is any mention of congressional pay, this room will be full of television cameras looking to see who is strong enough to stand up and say there should be an adjustment of congressional pay.

Those are the realities we have to live with. With that in mind, I would like to ask you or any member of your panel to give me your personal response to what the President did after you met with him regarding this report.

He first indicated that he wanted a strong ethics act and followed that up by suggesting that there should be compensation adjustment for judges and certain key positions or job titles. Therefore, he had a fairly narrow approach to what pay adjustments we should make.

I negotiated with the previous Director of the Office of Personnel Management for most of last year regarding the pay issue and found that administration was only interested in two agencies of the government—NASA and the Defense Department. However, I have just as much urgency being presented to me from other agencies, and I was fearful that if we only solve the problem for the high-visibility agencies, the other agencies would be left behind, and somebody would be trying to do this again in 20 years.

What is your impression of the President's reaction? Do you have the feeling that we are going to be able to talk with the President or his representatives in a productive way about developing some of the initiatives that are in the report?

Mr. **Volcker**. Well, let me say, first of all, that I would be delighted to have my colleagues comment on the range of considerations that you raised. I certainly had the sense in talking with the President that he is aware of and sympathetic with some attack on these problems in the broadest sense.

I think that has been evident in his public statements as well as in the flavor and atmosphere of the conversation that we had with him privately. I don't think it is any great secret and his own subsequent recommendations reflect the sense that he thinks that judges perhaps are in a particularly difficult position so far as pay is concerned, but this is also a very difficult political issue generally.

You raised some questions of broad political strategy that you are, I am sure, better-equipped to answer than I am and probably my colleagues. They do raise questions of what is the most effective way of approaching a series of very much interrelated problems, given the difficulties of moving at all on the one side and the heat that you get on this issue when it is congressional pay or pay at the higher levels.

It is the importance of not just dealing with that problem but a problem that permeates much of government. I am not a Congressman, but we got a certain amount of heat, ourselves, on the commission for having recommended increases of congressional or higher level pay.

I understand the pressure that you have. The commission arrived at the conclusion quite explicitly, and I ought to say this, that if you feel you cannot increase congressional pay now in 1989, that you ought to go ahead with other senior level pay in the executive and in the judicial system notwithstanding your inability to raise your own pay.

In other words, if you cannot manage this issue in this year, we are saying, I suppose to put it bluntly, de-link it, at least right now. That may be in the interest of getting a more equitable pay scale all around in the fullness of time.

Our basic recommendation is that congressional pay ought to go up, too, and there ought to be a linkage there with the ethics issue, a very familiar concept which we are fully in support of.

They ought to go ahead with limitations on honoraria or elimination of honoraria and appropriate limitations on other forms of outside earned income.

So we do see that very much as a package.

There are issues, of course, outside the pay area, two of which I emphasized this morning, that we do hope that you would act upon in the space of this year. Perhaps my colleagues might want to add to that.

Mr. ORNSTEIN. Mr. Chairman, I think we were all encouraged in the meeting with the President by his sensitivity to the broader problem. It is a breath of fresh air compared to other recent experiences in the Oval Office. But we are disappointed with regard to our own recommendations with regard to pay, and I was disappointed with regard to what he has decided to do right now.

We recommended coming up with a two-stage approach to equal what the quadrennial commission had done. We recognize the enormous political difficulty that is out there right now.

I have been trying to see, as an individual, if we could play with other formulas that might fit into the political climate right now. One of the things I would encourage you to think about is a formula that doesn't exactly decouple congressional pay from the pay scales of others but that phases congressional increases in over a longer period of time than we would find with executive and judicial pay.

I thought, for example, that what might be a little more acceptable, given the political climate, would be a 30 percent increase and phase out the honoraria one-third, one-third, and one-third, so there would be no real cut occur by having the honoraria eliminated before we saw any kind of an increase.

So we could come up with something that would result, admittedly, over a longer period of time than any of us would prefer, in a real increase, but that is something that would be more palatable and acceptable and ending up with more equitable pay.

That is one alternative. Although President Bush said he did not believe that it was within the spirit at least of the separation of powers for him to recommend congressional pay levels and then to be consistent, decided that, therefore, it was not within the spirit to recommend elimination of honoraria which was more consistent than the initial approach.

Nevertheless, I think it might be good now to think about a broad-based formula. I think if we don't come up with something more imaginative, we are going to have a long wait.

Mr. **Ford**. Before anyone else comments, let me interject. Personnel directors and people like Dr. Fletcher, the former Director of NASA, who is going to be testifying soon, have indicated that if we cannot move with a substantial across-the-board pay increase, that we at least should consider reporting a bill providing special compensation for the highly technical positions for which the competition is most acute. Such action would indicate that there is a recognition by this committee and by the Congress that there is a problem and that we are trying to do something about it.

He put it in very blunt terms that unless we do that, he will not have enough people to finish the shuttle program because of the hemorrhaging that is taking place.

With that in mind, I would like you to think about whether we should move in phases, beginning with the more critical areas that could send a message to the work force that something is happening.

Is that worthwhile? Would that, in your opinion, have a salutary effect on people making decisions right now about whether they want to spend a few more years with us or get out now and try to make themselves economically whole?

Mr. **Volcker**. You are in an area that the commission did not discuss, so we cannot give you anything more than personal reactions. I have sympathy for dealing with these acute crisis points, and no doubt there are some, particularly in technical areas. I think that is happening.

I also have the feeling that you are ending up or on the road to a messy ad hoc system which is not appropriate. You should not go too far in that direction without giving a full hearing to the systematic reform that we are suggesting.

You would get some relief at the top level more or less automatically, I suppose, although it costs money and there is some additional decisionmaking involved if the top pay went up and you lifted the cap on the senior executive service.

I suppose there would be some willingness to make use of that higher cap which would help relieve some of the problems that you are talking about and show some sense of progress.

Personally, I am reluctant to see too many ad hoc arrangements. I made some myself in the Federal Reserve. We were not compelled by the same laws. We had some freedom of action.

But we have a lot of different agencies in Washington, D.C., let's say, with economists paid by different amounts because there is a different amount of political leverage or a slightly different law in different political agencies.

I think the kind of thing that you suggest is a pretty compelling argument for dealing with the situation more comprehensively.

Mr. **Ford**. Thank you.

Mr. Gilman.

Mr. **Gilman**. Mr. Chairman, I apologize, I will have to go to another meeting for a few minutes, but I will return. I would like to ask the commission, with regard to the report, there has been some criticism that the report provides no systematic program to remedy the pay crisis.

Would you care to comment on that?

Mr. **Volcker**. I think there was some disappointment by some people that we did not put our full weight behind a big, across-the-board increase right through the Civil Service. We did not do so because we thought we reached a point where, frankly, it was difficult to justify that logically and with the evidence we had of pay discrepancies at hand.

I have no doubt that on the average some substantial increase is justified, but the average in this case disguises a lot of differences by locality or occupation. We thought the emphasis ought to be put on a new system that better reflected the divergencies within the average.

The tradition is to increase the average and if the average was fully comparable, you are going to have some people who are fairly generously paid in some parts of the country with some skills in some areas and some people who are still underpaid.

Mr. **Gilman**. Aren't the generous areas a minority?

Mr. **Volcker**. Yes. Where there is a big concentration of employees is where the problem is acute.

Mr. **Gilman**. Some of us felt that a good across-the-board annual cost-of-living adjustment could take care of a lot of the problems. We examined this chart you have attached which shows how far off we are from the CPI. We had been closer, but now there is a great disparity.

It seems to me that an across-the-board system might be the most effective with Congress' reluctance to authorize and appropriate each time there is a pay increase.

Mr. **Volcker**. What I think we are saying is that there ought to be some kind of a minimum standard salary level. In fact, it is that minimum standard that would, among other things, govern the pensions nationwide. That is what we have now.

We use that as kind of a baseline minimum. You build on top of that supplementary pay which would indeed include the majority of the employees because most of them would be working in higher-cost areas, but you maintain the minimum and then you build upon that locality and occupational pay additions which could be substantial.

In my own mind, I guess it is not spelled out in the record, but that minimum ought to go up over time. That ought to be related to inflation.

Mr. **Ford**. Have you said that in your report?

Mr. **Volcker**. I don't think we said that explicitly. I think it is consistent with the report, but the report emphasizes the need to change the system. It does speak about a national minimum, so to speak, which is not tied to an increase according to cost of living.

Mr. **Gilman**. It is my impression based on what Mr. Ornstein said that the commission had reservations about the administration proposal to increase the justices and judges by 25 percent.

How do you feel about that?

Mr. **Volcker**. The commission did not consider that particular proposal. That came after the commission's report.

Mr. **Gilman**. Has there been any discussion?

Mr. **Volcker**. The commission position was, one, talking now of top levels, it ought to be increased for everything, the Congress tied in with the honoraria and ethical question, but there ought to be significant increases for the top executives, political appointees, judges and Congress.

We say if Congress is not willing to do that for itself, it ought to go ahead with it for both the judges and executives.

Mr. **Gilman**. What about the Ornstein variation?

Mr. **Volcker**. We did not discuss the Ornstein variant. That is an idea that has arisen this morning. We are laying out the broad principle as the commission. We delegate to you gentlemen the practical politics of getting it done. Mr. Ornstein has a very fertile mind.

Mr. **Gilman**. We wrestled with the legislation in 1978.

Did the commission take a look at that to see if the Civil Service Reform Act of 1978 has been an effective reform?

Mr. **Volcker**. There are greater experts than I about that particular subject, but I can tell you—and I will let my greater experts here comment on that—but there certainly was a sense that I got in chairing the commission that the experts that have looked at this have a sense of disappointment, that they recognize the valid objectives of that act, but there is, I think, a rather persuasive sense of disappointment as to how it was administered in practice and the degree to which it lived up to its promise.

That is the foundation of a lot of comments we made about the OPM and the directorship of the OPM and how OPM ought to, on the one hand, discharge its responsibilities and, on the other hand, its relationship with the President, and the argument that we make is that that relationship ought to be closer if the spirit of the 1978 act is really to be effectively implemented.

Elmer, do you have something to say about that?

Mr. **Staats**. We do suggest that the number of awards given to the SES group might be limited more than it is today to keep it from beginning a way of overcoming the problem of pay, to make it more what I think was the intent of the 1978 act, to make it a recognition of really outstanding performance.

My own experience in the GAO was that if you limit it to very strict criteria, that it is much more meaningful than to give it to a larger percentage of the people.

You will recall that NASA got into difficulty in the very beginning by giving over 50 percent of their people awards under the SES program.

While I have the microphone, maybe I could elaborate a bit on the pay problem. It seems to me that the pay problem is both general and specific. It is specific in the sense of critical skills and needs of the government.

I recently, for example, have been serving on a panel of the National Academy of Engineering, looking at the space program, the Institute of Medicine, looking at the NIH programs. We got elaborate testimony from both, quite independently, that you need a lot more flexibility in allowing the agencies to pay for the needed skills that they have to have.

The Congress, two years ago, I believe it was, gave the National Institute of Standards and Technology, the former Bureau of Standards, wide flexibility on what they could hire, pay at the hiring level and what they could pay at the top level, within the constraints that it not increase their total compensation bill.

Our commission recommends strongly that we move in this direction. The National Academy of Public Administration made a similar recommendation. We need more ability to relate compensation for needed skills.

I think the other area I would be particularly interested in dealing with is the top people in the SES level. We have limited it because of the Congressional pay. We all well know, we have had this cap on it for years now, but that simply means that while people down below get a pay increase, it simply compressed it at the top.

I think we need some way to relieve that. I don't know of any way to do it except to raise the pay for the top executive branch people. That is where we are losing the critical skills that we need.

People get discouraged. They decide if that is going to be the ceiling, I will look someplace else. I think we have a lot of evidence in our commission report to show that the turnover at those levels is really unacceptable.

Mr. GILMAN. Thank you, General.

Thank you, Mr. Chairman.

Mr. FORD. Mr. Ackerman has a plane to catch.

Mr. Ackerman.

Mr. ACKERMAN. Thank you very much, Mr. Chairman.

Chairman Volcker, one of the commission's recommendations is that federal employees who are performing substantially the same job should receive the same base pay and, along with that, an allowance for some employees to compensate them for higher living costs.

How would the commission determine what these allowances should be or should they be tied to the CPI or another system?

Mr. VOLCKER. You could tie them in to others. We had considerable discussion in the commission as to whether we wanted to recommend a particular tie-in to the area cost of living numbers you have or pay surveys. I don't think we resolved that, frankly, satisfactorily, within the commission.

But it is clear that either approach would reflect very substantial area and locality differences that we believe some system can be developed to take into account. That is not unknown in government now.

We are all affected by our own experience. The Federal Reserve in Washington has traditionally operated on the pay side as another government agency, although it has deviated from that recently.

Out in the banks, where most of the employees are from the beginning of Federal Reserve time, it operates on a locality pay basis which is rooted in local salary comparisons and surveys. It has worked quite satisfactorily.

We argued in the Federal Reserve that we might have ended up with a lower average pay than the Civil Service pay for many occupations, but in some areas we paid more. I think that experience is a workable system.

Mr. ACKERMAN. My next question is maybe even trickier.

How would you go about determining the geographic boundaries?

Mr. VOLCKER. The horror story that is raised is the guy who lives on one side of a river is in Locality A and gets higher pay, and the fellow on the other side of the river is in a different state and gets a different pay.

You will get some problem around the edges. Most of the employees are concentrated in major urban areas and are somewhat separated. The suburbs at some point may overlap, but it is not likely you will get a huge discrepancy between Washington, D.C., and New York or Boston.

But you would get a discrepancy between New York City and Utica, but there are not many commuting between those cities.

Mr. ACKERMAN. But there are between New York and New Jersey.

Mr. VOLCKER. But I don't think there will be much difference in pay there.

Mr. FORD. We have some experience in the Wage Board where we use areas designated by the Labor Department as wage areas, and adjustment of their pay is determined by what happens to other people in that same wage area.

Mr. VOLCKER. You have the experience of a few government agencies like the Federal Reserve. You have the experience of the Wage Board and many corporations that are not paying the same salaries across the country.

Mr. FORD. We have two other wage-setting mechanisms in other laws that come under the jurisdiction of the other committee on which I serve. The Davis-Bacon Act requires that locally prevailing wages be paid workers on government-financed construction projects. Over the years, that has become a very finite, analytic determination.

Not everyone is happy with it because you do get some occasional overlap.

There is a companion act, recently officially designated by Secretary Dole as the McNamara-O'Hara Act, called the Service Contract Act. It covers contracts providing services to the government by private employees. It requires the payment of locally prevailing wages.

We have a number of current practices to indicate that it can be done, despite the fact that traditionalists say you have to pay the same all over the country or it is not fair.

I don't believe the Education and Labor Committee has had many complaints about either of those laws in terms of what you use as the measurement for determining the pay.

Mr. VOLCKER. I would not suggest, Mr. Ackerman, that we have any finished, polished proposal to lay on your desk that could be translated into legislation tomorrow. But we do think, as a matter of practicality, that it makes sense to move in that direction.

Mr. ACKERMAN. I appreciate that.

With regard to the base pay component of your recommendations, are you suggesting that we substantially retain the current pay and classification systems or are there any specific changes?

Mr. VOLCKER. We did not go into detail, but we certainly contemplated apart from the locality issue that some allowance would have to be made for particular occupations that are particularly in demand or there is a particular scarcity of people, thinking largely of more technically-oriented or scientific kinds of occupations.

Whether that really requires a change in the general schedule philosophy, I don't know.

Elmer?

Mr. STAATS. I am told the Office of Personnel Management has undertaken or plans to undertake a broad study of how to deal with the problem Paul Volcker is discussing here. The Congress has in the past allowed differentials for cost of living. We still have the cost of living differentials in Alaska and Hawaii. We have tried to deal with the problem by adjusting pay for critical skills in certain areas.

This is a very complicated issue. One way you could deal with it is, of course, using the cost of living index for the metropolitan statistical areas. That still doesn't cover all the employees. We tried to deal with it under the Davis Bacon Act. Measuring the competitive labor market is a very tough job. All we are saying here is that there is a principle here that needs to be dealt with where you have to pay the same for a young attorney for the IRS in New York as you pay in Little Rock, Arkansas.

You just don't get those people in New York. It is a very practical problem that somehow we have to learn ways to deal with.

Mr. ACKERMAN. It is and I think we are going to be wrestling with that during this session.

I have one further question to Mr. Ornstein if I might concerning the initiative that you offered this morning.

I think you phrased it that the President was being consistent with his philosophy. How would you account for the President not wishing to upset the balance between the powers by offering his reasoned judgment about an increase in pay for Members of Congress despite his willingness to meddle in what the judges should be paid.

Mr. ORNSTEIN. There is no consistency there. It seems quite clear. Let me say I offered proposals in this case as an individual in the spirit of what the commission wants because we are all trying to grapple with this. There is no consistency there. The President obviously does not want to grapple with the fire storm in the aftermath of what happened in January and February.

What he wants to do is try and cope as he has to come up with nominations for judgeships with a terrible problem there and deal with some specific areas. He is trying to find ways simply not to take on this mess right now.

I think he tried to be more consistent when he moved away from a recommendation with honoraria, away from the recommendation regarding congressional pay. I believe personally from our meeting with the President that he is sensitive enough about this broad problem that before very long he will want to work out something that will cut across all the branches.

I urge you to think about innovative ways that we can get past this terrible political difficulty with a public that is clearly hostile, yet come up with a goal that we could all achieve. I know we have all been discussing and you have been discussing coupling and decoupling and where we go from here.

I know we are all faced with the difficult possibility that we could end up with elimination of honoraria and pay an increase for a period of time and go from the hopefulness of getting some movement in a positive direction to having something negative happen.

We ought to be able to come up with something innovative to get us past that lump. I threw out one proposal. I think that despite his fear of violating the separation, the President will be proposing something in that regard.

Mr. ACKERMAN. As someone in a position of suffering the burden of removing the honoraria and experiencing the pay, I thank you for those remarks.

Mr. FORD. I am moved to observe that if the last scenario you made were to occur, there would be a lot of junior Members becoming full committee chairpersons in the next Congress, I can assure you of that.

Mr. Horton.

Mr. HORTON. Overall, the Federal Government has been operating under similar conditions for a number of years. Why do you say there is a crisis now?

Mr. VOLCKER. One of the problems that we have as a commission is that a lot of experienced people think this problem has become extremely serious and is becoming more serious over time. The figures in this chart show the discrepancy in pay getting larger and larger and getting more important psychologically, and in terms of the perceptions over recent decades for a variety of reasons.

We cannot point to an absolutely discernible cause and effect relationship between erosion in public service and erosion in talents and capacity of public servants and their energy and let's say the savings and loan crisis or NASA's problems with getting the space shuttle up recently or any one of a variety of other problems.

An unambiguous relationship. We sense there probably is some relationship there. I will take away the "probably" but how do you dramatize that and make it clear? I can only say that a lot of experienced people with good judgment, I think, have concluded that this problem is approaching a point that justifies the word crisis.

They also put the word "quiet" in front of it. We don't have 19 television cameras with us this morning and an overflowing hearing room because it is not perceived in the same dramatic way that some relatively small aspects of the problem that congressional pay would immediately evoke or some other issues of government would immediately evoke, although this is probably more important.

Mr. HORTON. I certainly think there is a serious crisis and it is helpful that you have emphasized the broad range of these problems and the fact that they are not just related to pay.

I do believe there are pay problems. I assume there is quite a bit of competition. I remember a few years back, just before Mr. Carter was the President, we had a very serious problem in the military because of the pay. Senior persons in the non-commission and commission ranks were leaving the service because they could get better jobs; and ones with less demand on their time. Many of those people were leaving the service after eight, nine or ten years.

Until we raised pay a little bit, we were losing military personnel fast, which meant airplanes were not flying and ships were not being sent out, because of the lack of personnel. We tried to meet that crisis and we did, I think, to some extent.

Is there the same type of competitiveness in the outside private sector today that is pulling people away from the federal service or keeping them from going into the federal service?

Mr. VOLCKER. I don't think there is any doubt about that. You know, you are going to have problems when private law firms in Washington, D.C. and in New York are paying to first year people out of a good law school about the same amount that a judge gets. Coming back to my own experience in the Federal Reserve, you can take any government agency and these beginning lawyers are getting as much as we were paying our most experienced personnel in the Federal Reserve or in any other banking agencies or in the IRS. That is going to have an effect over a period of time.

It is almost a miracle sometimes that we still get so many good people. We get some good people because they are challenged and stimulated. That message has to get across to a lot of young people that there is a lot of challenge and stimulus left in government.

There are handicaps too. I saw an article: "Government Highway Engineers: A Vanishing Breed". Although the supply of college graduates is adequate, the future looks bleak to government agencies because they cannot hire their share. Private employers pay better salaries than the government can at the top. The IRS problem; another article: "The Complexities of the IRS Code". You read articles about the inconsistent answers the taxpayers get. Some of that is inherent in the code and some of it has to do with the quality of the people that you get in the IRS.

There are not enough of them to do the kind of quality job we are entitled to. The Defense Department spends $300 billion a year on procurement, a lot of it. We have large procurement scandals. What does that say about their competence and their ethical standards that we have in those vital, difficult, I am sure, positions in the Defense Department?

There are a lot of things that are telling us something is wrong here. They are quite seriously wrong and we ought to address this problem.

Mr. STAATS. I would like to add something here. Some of the indications are, you might say, anecdotal. There are impressions of people in the service; a lot are statistical, too. The GAO did a lot of studies on plans of people at the upper SES levels, saying as soon as I can retire I will and a lot of them have already left.

Another problem is on colleges and universities. People are not coming in. Very few of the top graduates at the colleges and universities want to come into the civil service. The White House Fellows applications are down. We don't know what all this adds up to but there is some evidence here, I think good evidence, that there is a problem we have to deal with.

Mr. **Volcker**. Let me make a small plea here. I spend some time at the University these days. I am a part time professor. The motto of the university is "Princeton in the Nation's Service." That means they used to encourage people to go into government, but there is not much interest now. I was talking to a group of freshmen and sophomores the other day. There was a small smattering of interest in the government. They were all very conscious of the fact that this was not a very prestigious place to work.

I asked them about this proposal for the scholarship program and whether that might stimulate some people. I got a strong positive reaction. They said if it is going to be good enough to make it competitive, it would be a matter of prestige to be picked. You are not just picked in a political process. If this was built up as something you had to compete for and it was known among their peer group that this was something special, there would be a lot of interest. I think there are some things that we can do to deal with the malaise.

Mr. **Horton**. I would add to your earlier comments, with regard to persons going out of law school and getting good salaries, I happen to know a Member of Congress whose son is just graduating from law school and will be starting with a law firm in New York City at $85,000. The Member's salary is $89,500.

Mr. **Volcker**. When he grows up he can become a Member of Congress and get a $4,000 raise.

Mr. **Horton**. You said in your recommendations there are 3,000 political appointees and that should be cut back to 2,000. Actually, 3,000 is a very small percentage of the total number of the executive branch employees. Why do you feel it is necessary to cut that number back? While you are talking on that subject, could you comment on the reference in your statement to offering more flexibility to those political appointees with regard to delegation for personnel authority and easier procedures for hiring and firing.

Mr. **Volcker**. I think those recommendations, in my mind, are absolutely consistent and complementary with each other. This builds up over the years because of an endemic suspicion of new administrations saying we don't quite trust those guys who are there and we better get some of our people in.

If every administration thinks that way, it all accumulates and we have gone from 200 or 300 to 3,000 in the last 50 years. It is a very small percentage of the total numbers of federal employees, but it is the crucial ones. You are talking about the top and the policy level of the basic departments and agencies of government. How many do they need? How many do they need to operate effectively?

It is our judgment that they don't need as many as they do and it is counter-productive to have that many political appointees.

Why is it counterproductive? First of all, as one of the commissioners eloquently put it in a public statement he wrote a year or so ago, when I get down to the fourth echelon, the deputy assistant secretary level, that no longer is an important job to those in the White House making these appointments. They are looking hard for somebody who helped them out on the campaign or somebody who has a special political campaign. He may or may not have particular substantive qualifications but they don't have the time with

3,000 people to sort out in a relatively few number of months to make a relatively sophisticated judgment. Those fourth echelon jobs might be very important in the administration of policy.

If you are a fellow who has some talent and devoted your career to becoming an expert in the government, you see those jobs as the culmination of your career and they are taken away from you.

How inspired are you going to be in spending a good part of your career in government if by definition that means you are not qualified for some of these jobs; kind of the interface of policy and administration? Very important jobs. There has been a good, big transition in the last few years from those kinds of jobs being career to being political.

I think you will find a lot of those political appointees will have agendas of their own. They will be less responsive to a President's program in many cases than a good civil servant would be and should be because they have had political careers of their own dedicated to a particular interest or another.

While they may be broadly sympathetic or of the same party as the President, they have their own agenda.

Thirdly, it is clear that their tenure is very short. The average is less than two years. There is a simple question of how effective they can be in administering the government, how much attention they will pay, when their average time is two years.

Mr. HORTON. Your recommendation is that pay be increased for top executive branch officials even though the salary for the person at the head of the agency may be capped. I think that would create some problems. I remember when I served on the Citizens Council, we discovered that the Chief of Police was paid less than some of the people that were on the force. It is not a good situation to have subordinates making more money than the agency head.

I do have some real concerns regarding those caps. I think the persons who head up the agencies should have salaries that are in excess of those who work underneath them. Is that a problem?

Mr. VOLCKER. It is a problem. It doesn't make sense intellectually or otherwise to have subordinates making more than the top people. Faced with the choice of having all the members of the Federal Reserve at my salary or keeping good people and having them make more than the chairman of the board made, my choice was to keep the good people and pay them more than my salary.

Going back to your previous question, you might get some insight from Mr. Schaetzel—from a long time career man from the State Department in his case—about the political mix.

Mr. SCHAETZEL. I think this commission had two career civil servants on it. One is on my left and I am the other. I went to the State Department in 1945. I think there were four political appointees. In the Reagan administration there were 101. Paul has outlined vividly the problems that exist within the service in terms of having people come in between the political appointee jobs of deputy secretary or under secretary and then moving on down.

I think Ron Spiers, the recent under secretary for management said that if you bring in a new job of under secretary that used to be special assistant and career people, that appointee brings a logistical burden of about 20 other employees, a tremendous problem for the management of the department.

Last week we had a ceremony honoring the 45th anniversary of Dean Acheson becoming Secretary of State. That caused a great deal of reminiscing about the quality of the State Department in the post-war period and the relationship between the handful of outstanding political people who came to those jobs with a background of professionalism. The basic thought I would like to recommend to the committee was not so much the critical mix, but the need for professionalism, that it is the background in the job that makes all the difference in the world in terms of those you work for at the political level and the kind of product you will ultimately have.

One final point: I would like to say that we talked to 3,000 political appointees. One has to compare that with the experience of other major democracies such as Britain and France or Germany. In each of those countries, granted they are smaller than the United States, the percentage of so-called political appointees runs from 25 to 30 up to less than 100 in those three countries. So we are really unique in terms of the percentage of people at the political level that we are continuing to bring in to our service.

Mr. STAATS. When I left the Bureau of the Budget in 1966 to become Comptroller General there were four political positions in the budget bureau, now OMB, designated as political. I was one of them. Today they have about 32. In my opinion, with the kind of turnover that you had there, you have lost a great asset in the continuity and experience of the professional employees of the OMB.

I would challenge anybody to say that we had less loyalty and devotion to public service than GAO with only two Presidential appointees. It seems to me the main loss that we had is the loss of continuity and professionalism where you have the high turnover in the politically designated jobs. Most of this increase in numbers has been in the Schedule C and SES groups, not in the Presidential appointees and Senate confirmed jobs.

That is a factor largely of new agencies and new programs. But it is in the SES and Schedule C level that we have this big increase in the number of political appointees. I am always impressed in my visits to other countries at the small number of jobs that change in administration.

In Canada you will find very few. I think in France it is something less than 50. So we are somewhat unique, I think, in this regard. I think the other point I would emphasize, based on my own experience, is that if you have jobs that have been traditionally civil service jobs rather than filled by political appointees, you have blocked a promotion route for those people. It is a moral factor and you are blocking a career path which we used to have.

Mr. HORTON. Thank you very much for your contributions.

Mr. FORD. Mr. McCloskey.

Mr. MCCLOSKEY. Thank you very much, Mr. Chairman.

I also thank and commend Mr. Volcker and everyone in the commission for being here today. I think in one of your brief comments, Mr. Volcker, you finally did get around to modestly observing something I would like to commend you for and doing a contrast or two.

It really does get at much of our problem. As I recall when you were Chairman of the Federal Reserve and we all read some of those articles you were making something like $89,000 a year, living in an apartment even more humble than mine and commuting weekly to your family in New York. Now contrast that to, say, the extreme ends of income in our society and the problems of getting support for increases for elected and non-elected officials. At one end, I have people making $12,000 or $10,000 a year or less in Martin County, Indiana, people who will fight for a $12,000 a year job in Martin County, Indiana, they don't understand how $89,000 is not more than twice what we could possibly need.

At the other end is the Mr. Milliken in the private sector making something like $580 million a year, whatever it is. His take last year was more than the gross national product of a dozen or more countries on this planet.

Another aspect of this which is very ironic to me with my AFGE friends, in my district I got more hell from the federal employees than anybody else. I am making the obvious observation that we have a long term educational job here that is not going to be very simple.

Sir, you straddle the very top of achievements in public and private sectors. How are we going to diminish greed? How will we get this into perspective and what do you say to a free market theorist who says $.5 billion in salary is fine?

Mr. VOLCKER. It is not fit for public consumption what I would say sometimes. In terms of their attitudes toward public salaries, you described what I am tempted to say is an impossible problem. I hope it is not impossible because we need support for doing something about it. Nothing has happened in recent months, beginning with the commission's public sessions, your reaction, the response we have had to our report and my talking to the press and others who have told me you have an easy job.

These problems you describe are very real. We have tried to come to I think practical terms with them in several respects. It was reluctantly and after a lot of discussion we said that if those problems are so overpowering at the most public level, your level, you should go ahead anyway with an action that is marginally less politically exposed.

Mr. MCCLOSKEY. Federal judges are even more unpopular than Congressmen, at least 10 percent.

Mr. VOLCKER. It is not that easy for judges either. A major recommendation, of course, is the locality occupational pay to make a little more comprehensible I think the differences that do exist between Indiana and Washington, D.C. and between an atomic scientist—and I am tempted to say economist but that is a bad comparison in terms of more ample availability of supply relative to demand—to make the system more comparable to the private market in those respects.

Do I think I am giving a satisfactory answer to your concerns? I am very conscious that I am not. I am not going to convince many people in your district or in my office.

Mr. MCCLOSKEY. I was not trying to put you on the spot. I was embellishing on the grandeur of the challenge.

Mr. VOLCKER. It is large.

Mr. MCCLOSKEY. You have a very excellent proposal for scholarships in the public service along the lines of military academies, et cetera. If you want to flesh that out, it would be great. I would appreciate that.

But I would think that a major component in this would be ethics in the public service and income in the public service. Somehow it seems that in the entire context of an increasingly secular society, ethics, quite frankly, and ethics related to income, have gone by the boards.

I assume that it would have a major ethical component as well as administrative.

Mr. **Volcker**. Part of the reason we are ~~all~~ having such a problem with the salary question is that unquestionably in my mind the general perception about government itself and among other things its ethical standards, one of the most dramatic things that happened in hearings that we had as a commission, some regional meetings we had, was in talking in an open forum with a young Vietnamese student at Harvard who had been a boat person.

He went on with some eloquence, how much he owed this country. He ended up penniless on our shores with his family. Various people, community groups, churches helped him with finding shelter, getting a job. He spoke warmly about his teachers in Pittsburgh. He ended up in Harvard in a leadership position.

Would he work in government? No, he had no intention of working in government. It didn't have an image to him about being effective, competitive, useful, and it didn't have any role models that he thought were appropriate for his life, no matter what he felt he owed this country, and he felt it had an image of corruption.

That is a sad story about the image of government to a fellow who said he owed a lot to this country. As long as you have this image, I guess you will not have a warm reception to the salary issue. We can only put it in the context of our report, and a lot of other recommendations that we make and the recommendations on the ethics issue you emphasized.

Mr. **McCloskey**. It has been mentioned before, but quite frankly, I think this is a scary time, the S&L crisis, Exxon Valdez, global warming, pay, environment, AIDS, where we are not facing up to the AIDS issue either medically or economically.

I read the Newsweek article the other night that I think was moderately irresponsible, saying everyone in Congress is a bum. It didn't quite say that, but it said they let the S&L crisis happen. They let the nuclear reactor crisis happen.

Obviously we have time and attention problems. If you are working on Iran Contra or S&Ls, you are not working on the nuclear reactor problem.

Does that say anything to you about congressional staffing, the scope, quality and size of the committees, committee staff? We get criticized for the burgeoning congressional staff.

Does it say something about the size of our government and that we cannot handle it?

Mr. **Ornstein**. I thought the Newsweek article was totally irresponsible. It was an opportunity to take a good, tough look at the Congress as an institution, and they instead came out with something shallow.

Mr. **McCloskey**. Thank you very much.

Mr. **Ornstein**. The place for cultural predispositions that have been out there for 200 years. You talk about the difficulties your constituents have with pay. We know 200 years ago when there was a discussion of increasing congressional salaries from $6 to $7 a day, we got the same reactions and judgments of the government.

It is part of our culture and we are not going to change that overnight or in a general way. As you raise the issues that we have, Congressman McCloskey, it seems to me one of the areas where we can have an impact on public education is to move away from the stereotype that what the government is, is a bunch of people who push paper and act nasty to us.

If the public thinks of the government in terms of people who clean up spills, who handle the air traffic control system, who do research on AIDS and Alzheimer's and other diseases and who do things that are critical to our lives and, as Walter Mondale said, ask the public if just adequate is enough in dealing with those kinds of things, you are going to get a different reaction.

That is what our commission has tried to do. So at least in one area that you have raised more broadly when this issue comes up, I try to sensitize people to what the government is and does, and there are a lot of things that the government does that are more critical to our lives where we don't want B or C level people. We want A level people.

Mr. **McCloskey**. What do you think of the congressional staff and our ability to ride herd on things?

Mr. **Ornstein**. I don't think we have a structural problem here. Our problem in the past, and this is also part of our culture, is that we think we can change all of our societal difficulties by shifting the institutions around.

Part of the reason that we have a deficit problem right now is that we have not had a national consensus that there is a problem, much less what to do about it. I look out there now and see the stock market, yesterday hitting a new post-crash high, that is not sending the kind of signal after a budget agreement that I don't view is solving the problem, but we are not getting the signal out there that society views it that way.

We are not going to pass that by passing a constitutional amendment or re-orienting the structure here. There are a lot of things we can do within the Congress about the budget process to make it better, but anybody who harbors that illusion that that will solve the deficit problem is wrong.

I am dismayed with the way the Congress handled the savings and loan crisis which we have known for years is a burgeoning problem, and some tough steps that would have involved short-term pain a few years ago would have meant much less of a problem today.

Mr. **McCloskey**. Don't you think the Executive Branch shares in that?

Mr. **Ornstein**. Yes, I do. I am not happy today with what I see as an inadequate response. The bottom line of many of these areas is that we expect and need leadership from the Executive Branch, and we find more often than not Congress will respond to that.

I would like to see you give some attention to problems in house. I would like to see it done without a stampede because of emotions that are out there. I think we need a very careful look at ethics, but one that does not assume that we can write solutions to all those problems, either, that may end up creating worse problems.

I would like to see us return to the committee system, return to the budget process and look at those things. We think we need changes in the other branches of government, as well. Don't believe that if we reform a few things, the public is going to say, okay, they solved that problem.

Mr. McCLOSKEY. That is a base for political leadership.

One final question. I bring this up at the possible risk of sounding ideological or biased. I am not the most radical left leading person on the Hill. Strife and crisis are not my thing.

We have talked about ethics. It has been centered on the financial side of things so far.

Is it possible now that the continually-documented assertion from the North trial that practically everybody at the highest levels of both administrations, including the previously self-proclaimed virtuous George Schultz, Mr. Reagan, Mr. North were lying as a matter of course, and now Mr. Bush does not want to talk about it?

Is this perpetrating the culture that it is all right to lie as long as you get through the campaign and will this hurt recruiting in the elective sectors?

Mr. GILMAN. I think we are straying far from the issue before us.

Mr. RIDGE. I think it is a legitimate question. But I don't think these gentlemen should be imposed upon to respond.

Mr. VOLCKER. If there is no danger, I would rather respond in the specifics. I think there are very great image problems in government. Some of these, not just that particular North question, but a succession of this kind of issues over time and the way they have been reported have an effect on the perceptions that we are concerned about.

I think some of these adverse perceptions of recent years probably go back as far as the Vietnam War and are rooted in that kind of controversy. There is a basic schizophrenia by the American people which may be inevitable which is particularly acute now.

When they think of government in the abstract, they think they need less of a salary increase. When something goes wrong, they suddenly want to know where the experts are in the government to produce the cure in the government.

You had Three Mile Island run by a private company. The thing goes wrong and everybody runs around not quite knowing what to do until some fairly senior bureaucrat comes from the Atomic Energy Commission and tells people what to do.

We have an AIDS problem. They want a solution right away. Where are you going to get a solution, from second-rate researchers in the Federal Government? You have a communicable disease problem.

We had the Legionnaires disease thing. Take it to the Center for Disease Control in Atlanta. Are you going to get an instant answer from a bunch of mediocre fellows down there? The savings and loan thing is going to cost us $100 billion plus. Would it have cost anything like that if more people, better-trained people, better-disciplined people had permeated the Home Loan Bank Board and the FSLIC?

It seems to me the answer is obvious.

I wanted to read this quote from Walter Mondale. He said, "The next time you take an air flight, do you tell your wife and family, 'Don't worry, dear, the controllers are not the best, but they are okay'?"

Mr. McCloskey. Thank you.

Mr. Ford. Mrs. Morella.

Mrs. Morella. I have to dash off to a hearing on Metro funding, so if I talk quickly, you will understand.

I care very much about our doing something to be more equitable in order to recruit and retain the finest in public service. I represent the NIH, Nuclear Regulatory Commission, Bureau of Standards and Technology and a number of other agencies located in my district. I am on the Science and Space Technology Committee, so I understand the needs of NASA.

I know we are losing highly qualified people. We are losing the opportunity to attract them. We are finding we cannot even get people in two-year rotator slots.

As a representative of many federal employees, I have a concern with regard to President Bush's plan to give a 25 percent increase to the Judicial Branch, and then to five critical areas through salary area latitude.

Pick the critical areas that are going to be the ones that are going to be highly visible, the scientist who is going to come up with the cure for cancer, the person in charge of the space telescope that is going up in December.

We are going to forget about the IRS, the statisticians, the people who are also important but are not visibly that important. I have a concern that it is going to be demoralizing.

This kind of picking, the selectivity, I think will be demoralizing to the entire federal sector. I hope we will do as you have suggested, that is come up to the levels of the 1969 equity and then automatically, including Members of Congress, just get on a cost of living inflation—do you agree with what I am saying about the demoralizing facet?

Mr. Volcker. I don't know if it is demoralizing or not. I agree with the thrust of what you are saying, that we should not pick out the selected areas and leave it there. I think you could have some differences of opinion about the approach the President is taking.

If I view this as a step that is likely to be the end of the road, then I think it is subject to all the criticisms and doubt that you are making. I don't know which it is. I would prefer to do it as his method of breaking the ice, so to speak.

Mrs. Morella. I think it is. I think the President is sincere. We deal a lot with perceptions. I think the administration concept is going to be the adverse concept the public has. I think people need to be educated.

I represent the most highly educated people in this country. A number of you are my constituents. I find still when I am talking to groups that the whole concept of public service, the importance of working for the Federal Government, is still lost by the public.

They cannot understand that it is important. One of the things that you are recommending is educating the public. It is a lousy way to run a company and a lousy way to run a country if we do not give recognition and prestige to our federal employees.

We have an education job and a perception.

Mr. **Volcker**. Point 1, I agree with that.

Mrs. **Morella**. Then you talk about the scholarships, possibly. I agree with you that we have to make them competitive. We have to demonstrate to young people—at college fairs and every place possible—the advantage of public service and the whole concept of serving.

I have a bill in for Peace Corps scholarships. It runs parallel to the ROTC program. It would be the last two years of college paid for by serving two years in the Peace Corps.

I have found people who go to the Peace Corps to get involved in public service.

Do you have any comments about that?

Mr. **Volcker**. It is along the same general line. I guess there is some sentiment on the commission to support anything along this line as in the general support of the common cause.

I do think, picking up your own motive earlier, that these things should not be too specialized. I would argue that there is virtue in doing one that is not for any particular part of government but for public service generally, building up a pool of scientists, administrators, whatever, that are available for a variety of agencies, variety of jobs and career paths.

So I would argue that this general approach and concentrating attention on that may have special merit I would commend.

Mr. **Ornstein**. We have a problem with the attitudes many young people have toward the Federal Government. It is also clear many people want to work in the Federal Government who find it almost impossible to do so.

The recruitment process makes it very difficult. The forms are often daunting. You don't find very aggressive attempts by many agencies to get out to campuses. The private sector is there, but very few federal agencies are.

There is not much taken into account having to do with the times students graduate. We have to find ways to improve the recruitment process, by finding ways to compete with the private sector and make sure we don't deter those who want to work in the Federal Government.

Mr. **Staats**. There is a great deal that can be done. As far as I know, there are only three agencies that do recruit on campus; GAO, FBI and IRS. The private sector could not do their job if they did not do on-campus recruiting.

Another thing that could be done would be to greatly expand the number of people who come in under the summer internship programs and the co-op program. A number of things of this type that could be done which do not cost any significant amount of money but do a lot to heal the breach between the students' interest and job availability and what can I do in the government to be helpful? One of the things I had going for me in GAO was the summer interns and the co-op.

We said a great deal in our report about the importance of presidential leadership, stressing the importance of public service for the younger people and people already in the service.

The President made a very fine statement to the SES group in Constitution Hall shortly after he became President. I found this very encouraging. Similarly, I found encouraging his statement on ethics in the public service.

I would hope that you might, Mr. Chairman, make part of the record here the two statements the President has made. I think they are very much in line with what we are trying to emphasize.

Mr. FORD. Without objection.

[The information follows:]

GEORGE BUSH

October 5, 1988

Sent To leaders of a number
of associations of federal,
state + local employees

Sample

Dear

My experience as Vice President, and as Director of the CIA, has given me a very high regard for the overall competence and dedication of career civil servants. They serve a vital role in our democratic form of government.

Experience in our government has also made me aware that public service at all levels - federal, state and local - is facing serious problems. As President, I hope I will have your help and your organization's assistance in identifying, analyzing and finding ways of solving those problems.

The attached statement outlines in broad terms my views on public service and on the ways in which I will approach some of its problems. Further work to develop specific actions is being done by several members of my staff. As part of their effort, they have been talking with two bipartisan groups, Paul Volcker's "National Commission on the Public Service", and the Congressionally-chartered "National Academy of Public Administration."

It would be very useful if you and appropriate members of your organization would review the work of these groups. Enclosed is Chapter 4, "Reinvigorating the Public Service" from the National Academy' s Report for your perusal.

I look forward to a cooperative and productive relationship with you and your organization.

Sincerely,

George Bush

George Bush

Bush 88 Quayle

733 15th Street N.W.
Suite 800
Washington D.C. 20005
202 842 1988

STATEMENT OF
VICE PRESIDENT BUSH
FEDERAL SERVICE

My experience as Vice President, and as Director of the CIA, has given me a very high regard for the overall competence of career civil servants and for the vital role they have in our democratic form of government.

How well the tasks of government are done affects the quality of the lives of all our people. Moreover, the success of any political leadership in implementing its policies and objectives, depends heavily upon the expertise, quality, and commitment of the professional career employees of government.

So, despite our determination to cut the size and costs of government, we recognize that the nation needs a highly skilled and dedicated civil service to perform those governmental services that we - as a people - decide we want.

For those reasons, improving the quality, morale and performance of the public service will be a high priority of my administration. My appointees will work closely with career civil servants to provide the teamwork needed to implement my policies, and to manage more effectively necessary programs across the government.

One of the things we will do is to provide a White House orientation program for all new appointees without previous federal experience. That orientation will have firm objectives: to show them how to be effective in the federal environment; to be sure they understand the limitations our democratic system places upon Executive Branch officials; to help them lead their agencies skillfully; and to urge them to build teamwork among the political and career officials in the agency they lead.

Through that kind of teamwork, we will launch a vigorous effort to achieve excellence in governmental programs and the delivery of services to the public. Many of the past failures of government have occurred - not because federal employees lack talent and energy - but because byzantine rules and procedures imprison talents and sap morale.

It has been my observation that most federal workers are like most other American workers. They have the same desire for pride in their work, the same drive for accomplishment, and the same work ethic that has made the American workforce one of the most effective in history. It will be our objective, therefore, to remove impediments to effective management and to encourage workforce creativity.

Because of the rigidities now existing in the federal pay structure, many agencies are finding it difficult to retain and recruit high-quality employees. This is especially true in hard-to-hire occupations and locations. Working with both federal professional associations and federal employee unions, we will seek to improve federal recruiting efforts and to make federal jobs more challenging and more satisfying.

As examples, we will experiment with "honors" programs to attract top professional and law school graduates; with new types of in service professional development; and with tuition assistance for work-related courses.

Several major studies of the federal service are now being conducted by such distinguished groups as the National Commission on the Public Service (which is headed by Paul Volcker) and the National Academy of Public Administration. The objective of these studies is to advise the next President on ways of solving the problems of the public service and they have been assured of my interest in their recommendations.

The Office of Personnel Management (OPM) must be a vital center for human resource planning for the federal workforce. The Director I choose for OPM will be a person with both the managerial and professional experience needed to fill that role. Responsibility for personnel operations, however, will be delegated to the departments, and to their field installations to the maximum degree feasible. Over-regulation WITHIN the federal government is as unwise as over-regulation BY the federal government.

We will also be open to further congressional suggestions for legislative improvements in the personnel system. For example, we will explore carefully the idea of extending to children of federal employees the law allowing students who reach the age of 22 to continue their health insurance coverage under certain conditions.

Beyond these specifics, my administration will work cooperatively and continually with your group and with other friends of the public service, to make it more efficient, more effective, and more productive, as well as a more satisfying place to work.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 26, 1989

REMARKS BY THE PRESIDENT TO SENIOR EXECUTIVE SERVICE EMPLOYEES

Constitution Hall

2:10 P.M. EST

THE PRESIDENT: Thank you so much. All right, here we go. Thank you so very much. Mr. Vice President -- thank you for that very warm welcome. Mr. Vice President and members of the Cabinet and designees and ladies and gentlemen. Let me first recognize especially the recipients of the Presidential Distinguished Rank Award who are with us here today.

And it's great to be here with all of you, the men and women whom I regard as certainly among America's finest. You're the first group that I am addressing as President outside the White House and you're one of the most important groups I will ever speak to.

And you know, I wanted to be fully briefed before I came so I asked one of my staff, "When does open season begin?" (Laughter.) And he says, "For you, sir, it begins as soon as the honeymoon ends." (Laughter.)

We're all wise in the ways of Washington, especially you who have served this country with such distinction. And we know there are ups and downs. But I must say, there is a nice feeling around today in the country. I think people, when a new president comes in, do root for him regardless of partisan politics. That comes up tomorrow. But for today, why, I think there's a good mood out there and I thank you for that welcome to me and to the members of my Cabinet and designees and others that are here with us on this platform. Pundits agree, regardless of party, that of all the candidates I had the best Form 171. (Laughter.) I -- but seriously -- (applause.)

But really what we do have in common is that each of us is here to serve the American people. Each of us is here because of a belief in public service as the highest and noblest calling. And each one of us, on our first day, took a solemn oath: We pledged to defend the Constitution of the United States, and that is exactly what we shall do.

And our mandate comes from the people, because, as Abraham Lincoln said, "No man is good enough to govern another man without that other's consent." And so now that the people have spoken I'm coming to you as President and offering my hand in partnership. I'm asking you to join me as full members of our team. I promise to lead and to listen; and I promise to serve beside you as we work together to carry out the will of the American people.

Our principles are clear -- that government service is a noble calling and a public trust. I learned that from my mom and dad at an early age, and I expect that that's where many of you learned it -- there or in school. There is no higher honor than to serve free men and women; no greater privilege than to labor in government beneath the Great Seal of the United States and the American flag.

And that's why this administration is dedicated to ethics in government and the need for honorable men and women to serve in positions of trust. Yesterday, I appointed a commission -- bipartisan commission, headed by Judge Wilkey and former Attorney General Griffih Bell, to develop ethics reform proposals which will include all branches of the federal government. The guiding principle will be simply to know right from wrong; to act in accordance with what is right and to avoid even the appearance of what is wrong. Our duty is to serve, and my strong conviction is that we must do it only for the right reasons, as you do, out of a sense of service and love of country. Government should be an opportunity for public service, not private gain.

And I want to make sure that public service is valued and respected because I want to encourage America's young to pursue careers in government. There is nothing more fulfilling than to serve your country and your fellow citizens and to do it well. And that's what our system of self-government depends on.

And I've not known a finer group of people than those that I have worked with in government. You're men and women of knowledge, ability, and an integrity. And I saw that in the CIA, I saw that when I was in China, I saw it at the United Nations. And for the last eight years I saw that in every department and agency of the United States government. And I saw that commitment to excellence in the federal workers I came to know and respect in Washington, all across America, and indeed around the world. You work hard, you sacrifice, you deserve to be recognized, rewarded, and certainly appreciated. I pledge to try to make federal jobs more challenging, more satisfying, and more fulfilling. I'm dedicated to making the system work and making it work better.

Starting eight years ago I led a task force to remove unnecessary regulation of the private sector, to free up the energies of the American people. But I think we also need to continue to remove unnecessary and counterproductive regulation of federal workers and senior executives. I believe that there is tremendous pent-up energy in the federal government, a powerful force for good, that needs to be released, and I want to be the President to do that, to release the federal manager from bureaucratic bondage so that together we can, as I said on the steps of the Capitol, use power to serve people.

I think Connie Horner has done an outstanding job at OPM, at the Office of Personnel Management. And I'm delighted that my new Director of OPM will be Connie Newman. She is an outstanding executive. I have great confidence in her, and I think she's learned a few things on her way up since 1962. That's the year she began in federal service as a clerk-typist at the Department of the Interior. And just as the award winners here today represent the best and brightest, I think in choosing Connie I found one of the best and brightest, as well.

Now, as the Cabinet secretaries staff their agencies, particularly the senior position, they'll be looking for ability, for people committed to fulfilling the mandate we received from the American people and to doing it with excellence. And if we find that the best choice for an appointment is a career government executive, I am for that and I hope that my selection of Tom Pickering to be our Ambassador at the United Nations is underlining that point.

I have a conservative vision of government; I ran and was elected on those terms. And I see no strain or tension between those values and the values of a professional civil service whose highest principle is one of patriotism, whose foremost commitment is to excellence, whose experience and expertise is in itself a national resource to be used and respected. I urge all my appointees to build a spirit of teamwork between the political and career officials.

And each of you has a special role to play here. You've reached the top of your profession and you're skilled managers, knowledgeable in your fields, respected by your colleagues. And I'm asking you to join with our political appointees not only in setting an example of cooperation but, again, one of excellence as well.

To those who work outside Washington, I would send a special message. At times it may be frustrating when it seems that the head office is thousands of miles away and the message is not getting through. But if I may, I'm going to issue a verbal executive order: We're going to listen. Because the heart of our government is not here in Washington; it's in every county office, every town, every city across this land. Wherever the people of America are, that's where the heart of our government is.

And since, in any organization, so many of the best ideas come from the bottom up, I hope the people in this room will listen, listen closely to the people who work for you. The civil servants on the front lines know what works because they're right there. Whether they're working with disadvantaged children, promoting American exports, or managing our public lands, they are in touch with the American people.

And there's much we need to accomplish for America. There is a mandate to fulfill. And there are problems to solve. We have work to do in promoting education, protecting the environment, and certainly in fighting crime. We have work to do in our cities and on our farms, and we have a war on drugs to win. We must provide for the common defense, strive for a lasting peace, and we must keep our economy growing so it can keep producing jobs and opportunity. Above all, we have a compact with the American people; they pay for excellent government and they deserve to receive it. And together we can assure that that is done.

And there's one more thing we need to do. The government is here to serve, but it cannot replace individual service. And shouldn't all of us who are public servants also set an example of service as private citizens? So I want to ask all of you -- and all the appointees in this administration -- to do what so many of you already do -- to reach out and lend a hand.

Ours should be a nation characterized by conspicuous compassion, generosity that is overflowing and abundant. And you can help make this happen outside of your workplace, in your communities and your neighborhoods, in any of the unlimited opportunities for voluntary service and charity where your help is so greatly needed.

Well, I'm honored to be with you, to work with you -- you here in Washington, your colleagues in the federal service around the nation. They're some of the most unsung heroes in America. The United States is the greatest nation in the world because we fulfill that mission of greatness one person at a time, as individuals dedicated to serving our country.

And as we embark on this great new chapter in our nation's history, I want to tell you, came over here to tell you that I am proud of you and very glad that we will be working to write this chapter together.

Thank you all and God bless you in your important work. Thank you very, very much. (Applause.)

END 2:23 P.M. EST

Mr. **Staats**. In internal programs, in the meetings we have had, we have found that people interested in public service have been congressional interns. There is a marvelous opportunity to expose these people to the government and to lead them into a career in public service.

Mrs. **Morella**. What about sending people from agencies into high schools to talk about the various opportunities?

Mr. **Schaetzel**. One is the Woodrow Wilson Fellowship Foundation which has a program to send people out as senior fellows to private institutions throughout the country. It would be a way to get young people who are outstanding in the public service for, say, six to 10 years, who would have a rapport with people in the colleges.

We talked to professors at both high school and college levels, how it would motivate young people seeing people in their jobs.

Mrs. **Morella**. I sponsored a program last year for students in Montgomery County. We took one child from each high school, public and private, and planned a whole week. We gave them a touch of executive, legislative and judicial branches.

They watched the space program. It opened their minds.

One final question. Where do you go from here? Are you finished now? Did you propose there be another commission that would present a biennial report to the President?

Mr. **Volcker**. This commission is going to close up shop shortly; at least the Chairman is. If you will give me an opportunity for a commercial, particularly with your earlier comments, we had four or five task forces that had substantial reports.

One dealt with the educational area, the primary and secondary schools, the kind of things you were talking about, and the importance of it, and its various guises.

We would love to have a transition, frankly, and feel that we could rest in peace, so to speak, if this committee and the Congress enacted our idea of a permanent council. This is an adaptation of what you already have.

You have a quadrennial council that comes into place every four years. It makes an announcement on salaries and disappears. It has been almost totally ineffective, I must say, in having its salary proposals effective.

Maybe part of the reason is that it is a phenomena that comes around and lights in Washington once every four years for three months and focuses on the salary issue. Why not take that basic structure and turn it into a kind of continuing oversight body to maintain a continuing interest in all these problems, of which salary is only one, and provide a vehicle for reminding the President and the Congress that there are some continuing problems, making some recommendations as it sees fit and keeping these issues very much in the national agenda?

If you converted the quadrennial commission into a permanent commission, not a quadrennial commission but a permanent commission, and gave it that mandate, I think most of us on the commission would feel that we had at least turned the responsibility over to appropriate hands for a more permanent and continuing examination.

Mrs. **Morella**. And broaden the scope of their responsibilities?

Mr. **Volcker**. Not excluding the salary question, keep that under their surveillance, but broaden the scope of their responsibility to the whole range of issues we are talking about.

I think as a practical matter, they would want to remain in close touch with the Director of the OPM. That is an obvious contact point. We conceive of it as being asked to make a general report once every two years that the President and you have to respond to as a vehicle for maintaining a review of these issues.

In one sense it is a relatively small thing. It doesn't cost much. It would not require a substantial staff. It is not a big investment of money, but it could do a lot to avoid the need in the future for the kind of problem we perceive that gave rise to this problem in the first place.

Let's keep it in continuing review so we don't reach the stage in the future, assuming we don't make some repairs that require an enormous effort, starting from a position of difficulty.

Mr. **Staats**. Personnel systems of government are widely spread; TVA and GAO, do not come under the purview of the OPM. The Advisory Commission, we recommend, would concern itself with all the personnel systems of the Federal Government.

We don't have a place now that has the overall concern.

Mr. **Volcker**. We would like to see that transition to that kind of commission and maybe some organizations that are active in this area will, we hope, pick up the ball a little bit and keep the attention going and keep the pressure on you people to act in these directions.

We had considered doing a video directed toward the audience you are talking about. Those things cost money, and we have not decided yet whether we have the money or the talent to raise the money to make the videotape. We might do it.

Mrs. **Morella**. I know it takes more than a little energy on your part. You have exerted so much. I know you would have the support of the groups interested, certainly federal union groups, I think, would be interested.

Mr. **Volcker**. That is the last thing on our agenda. We hope that the idea that methods are devised for keeping the effort going, even if it is not in the formal context of a 37-man commission with a particular office, et cetera.

Mrs. **Morella**. I thank you for your talent, time and commitment, and that all the commissioners have spent on this.

Mr. **Ford**. I thought you meant a 37-person commission.

Mr. **Volcker**. What did I say, a 37-man commission? I use that generically.

Mr. **Ford**. It occurs to me that if we make such a commission, we should make it clear that they have a statutory authority to accept private and foundation money. I think there are foundations that might be interested.

Once they are involved, it is remarkable the way they elevate the importance of things that they put money into. They become partners in the success of the adventure.

We will ask the subcommittee Chairman to make sure the legislation permits the commission to receive funds from the public. I am sure we could call on a lot of resources in the private sector.

Mr. **Volcker**. I think that might be true. My off-hand reaction is that it might be a very good idea if it has a core of public financing.

Mr. **Ford**. If it doesn't have public financing, people in Washington don't take it seriously.

Mr. **Volcker**. I think that is correct. I don't think it would take much, but I think the core of their work should be supported by public funds or it is not worth doing it. They should not be doomed to the begging bowl to do the core of their work.

It may be that foundations might be interested in sponsoring some research projects. It would be very useful.

Mr. **Ford**. Mr. Kanjorski.

Mr. **Kanjorski**. Mr. Volcker, because I have such a high regard for you, I would like to share with you something I find rather humorous. We were talking about corruption in government.

I came to this city as a young page 35 years ago. I have the perception that we have less corruption in government today than in any other time, in that 35-year period or for that matter, any study I have made of history.

It disturbs me that we are now looking at it with the presumption that public service is a corrupted service.

Mr. **Volcker**. That is not my presumption. I spent a lot of time in the public service. If I thought that was true——

Mr. **Kanjorski**. No. But when we go to our districts, our constituents' average perception of salaries or incomes is really quite misconstrued. I don't know why. Maybe it is because some of the retired voters worked prior to 1970, before there was the vast increase in inflation. Now they think that they can buy an automobile for $2,000 instead of the average $15,000.

I know if I go to my district and I ask the average person to tell me what a bank president, a doctor, a lawyer or a professor makes, they usually miss the mark by several hundred percent.

I wonder if it would pay for us to encourage the corporations or businesses of this country to start announcing the salaries of talented people that they utilize. I think this is worthwhile.

When the Chairman told me that the individual invited to handle cancer research at the NIH turned down the job of $80,000 a year because at a midwestern state university he was already receiving $124,000 a year, I think that is important to get such disparities out to the public.

I wonder about what you described as an editorial when you came out with the commission, something that has to do with the press. I hate to attack the press, but I think I have to in a way.

They said, "Here is another commission trying to get a congressional pay raise. We beat it before and we beat it again. It is headed by a former, failed economic guru."

Think about this, the name Paul Volcker in my district is not well-known, except in the academic and professional world. With the use of those four words, the press undermined the credibility of the entire commission.

We are getting this all over. There are some articles in The Post that have appealed to me. Some of these reporters who are beating the salary question, beating the corruption question, beating the lack of activity and productivity of public employees, are the first ones to stand up and scream that they will not disclose their incomes nor their honoraria.

I think it is important for a commission like yours. We probably do not have the clout to force these people to disclose, but maybe we ought to find out what some of these outstanding columnists today earn in honoraria and from where and for whom they speak.

I think that would be very educating to the American people. Maybe it would help. Maybe it would not.

I am frustrated as to what we do because I know we have lost some active people here, both on the committee and on my staff. I get applications from the finest students across America. They can afford to come in and work for me for three or four years, and they then can no longer afford to work in a city where more than one-third of their salary goes for rent.

I lose them not to other government agencies, unfortunately, but to the private sector or because of L.A. Law, to law schools.

Maybe we ought to have a super bureaucrat on television, Mr. Congressman, something sexy.

Mr. VOLCKER. If you can develop that script, it would be greatly welcomed. There used to be programs about the FBI.

Mr. KANJORSKI. We have an Ethics Committee in the House that works on that full-time now. This is probably, in my experience, a low time in life for many people in the federal service. I don't have a question, but I wanted to congratulate all of you for taking the time.

Little reward will come other than by this committee or other committees of the Congress. I am sure you will be lampooned, scorned for everything you say. At least I appreciate it.

I think there may be a few of my constituents that appreciate it. After Ambassador Laingen visited me in my office, I gave it a considerable amount of thought. I know I speak primarily for the Democratic side, but anything we can do to increase the talent, the level, the skill, and try to take the pressure off the difficult job, I think that is what we are here for.

Dr. Ornstein, if you have ideas, I will never consider them whacky. Come forth. I think we need innovative solutions in government if we are going to turn this around. If we don't, we are losing the best and the brightest. We have too many spots up there now that are failing.

The system is weaker now than it has ever been, unfortunately. So if there is anything that we can do—thank you, Mr. Chairman.

Mr. FORD. Mr. Ridge.

Mr. RIDGE. Thank you, Mr. Chairman.

Panel members welcome and thank you for your leadership in America.

I have some specific questions about going about trying to repair some of the problems that you have identified in your report. I am also aware, as my colleagues are, that the task is monumental. I can only think of one anecdote that shows how difficult. I recall a conversation several years ago with a very, very successful businessman who had surrounded himself with very talented people who undoubtedly led to his success. We discussed the need for a certain level of public service within the community, advantages that were appearing and reappearing, high turnover rates and the need to possibly raise salaries. This very successful businessman suggested that there were still enough young people out there looking for jobs that we should not have to worry about the salary.

That came from somebody who should have known better. So along those lines I would like to follow up on some questions my colleagues have asked. First of all, with regard to the reduction in the number of executive appointees, it is very attractive to me and probably will be attractive to all future transition teams. I like the idea of trying to elevate the level to which public servants could rise during their lifetime and I also like the idea of greater continuity at a higher level.

I think you lose that when you start taking the top layers off every four or eight years. How would you propose that this committee or the Congress having identified that as a problem go about making that repair? Is this something we should rely upon future executives to do? Should we use authorizing and appropriating committees to limit salaries and the number of appointees in those areas?

I think you have touched on a very critical point for the many, many valid reasons but how we could go about it in a very real way to make those repairs?

Mr. Volcker. You are going to get out of my depth very quickly. I think there are limitations on political appointees in the Senior Executive Service where I think the bulk of the problem lies. We recommend that some of those restrictions are tightened.

But I suppose there is no real ceiling. You can just reduce the overall ceiling for that group in the Senior Executive Service. There is a ceiling as to how many each department can have as a proportion of their total senior executive staff.

We propose that that which I think is 25 percent in some departments be reduced.

Mr. Ford. It is 10.

Mr. Volcker. It is 10 overall, but can go up to 25 percent in some particular departments.

Mr. Ford. That is correct. OPM allocates out of a pool that is created by 10 percent of the total that can be non-career.

Mr. Volcker. We specifically said we didn't see why any department would have as much as 25 percent political. You could play around with those numbers. That is one answer. I think Congress and the executive branch alike are subject to the temptation of creating more or less. How many assistant secretaries are there now in the State Department? Too many, I will say, whatever the answer is.

It is 28. I will submit to you that the State Department can do a more effective job with less than 28 assistant secretaries.

Mr. Staats. The political appointees could be moved to Schedule C. That would help identify the SES as a career service.

Mr. Schaetzel. I suspect nothing will reduce the number from 3,000 to 2,000 without congressional action. There are political measures in the executive branch to find jobs for people. They are overwhelming. I cannot believe any President, including this one, will do anything strong enough to reverse this tide.

Mr. Volcker. I make the point that we had some discussion about this on the commission and decided not to make any judgments about congressional staff. There is a feeling that there is a kind of self-reinforcing process here between political appointments downtown and the political appointments on the Hill.

The more you appoint, the more they appoint and the more they appoint, the more you appoint to answer and ask the questions.

But we did not deal with that problem. We confined ourselves to the executive.

Mr. RIDGE. I appreciate your candor. I share your views. Maybe it is because of disproportionate staffing levels between the parties, that and other things. We continue asking for studies, commissions and reports and they are done and sent back. We want people to take a critical look at them, and we employ people, it all kind of feeds on itself.

It was very revealing and astonishing for me to learn that those sub-cabinet political appointees, that you have a retention rate of less that two years. Are there any lessons to be learned from your analysis of that particular fact involving either pay, recruitment, that differs from the general conclusions that you draw in your report of leadership for America? The fact that we could get these people involved in the system, obviously as I understand the transition team does not have a shortage of people seeking positions. We have all these people looking to work for government and after two years they are gone.

What lessons do we learn from that group?

Mr. VOLCKER. Clearly there is no shortage of people looking for a position in government that they consider prestigious. What is at issue is the quality of those people and whether we are getting a fair share of those we should be getting. I think some of this tenure question is inevitable.

They are not going to stay for less than four years unless you had a reelected President. It is inherent that you are going to get a rapid turnover. It has gotten more rapid because of salary and other problems. There is no doubt about that.

I think that goes back to the question of the proper political career mix. You have to recognize people are truly temporary, even if they stay four years which would be kind of a normal tour of duty. Their time horizon is not very long. It is the success of that administration.

I am not being critical now. I have been in this position myself. You don't devote a lot of attention to the kind of long-term health of the agency or the career path or the personnel system because there is no pay off for it.

You are busy and concerned for the immediate pay off issues. The policy issues go by the board to some extent. The deeper they go into the bureaucracy, the more difficult it gets in terms of the continuing life and health of the agency.

In the old days, at least it was typical in the Treasury Department, not very many years ago, that they had two career assistant secretaries; one for management, obviously a focal point for the continuing concerns of the departments, and one was called physical assistant secretary in charge of accounting and department management and lots of other things and the continuing functions of government.

They went by the board 10 or 15 years ago. Do you have a more effectively operating Treasury Department as a result? It depends on the individual and the rest.

But I thought that was a pretty good tradition. There was a similar tradition in the State Department for some of those positions that kind of disappeared. Those were—within the Civil Service—very prestigious positions, but they are gone.

Mr. RIDGE. Again, just a follow-up. As I recall, you see it all the time when we try to negotiate agreements with other countries, arms control, GATT, anything of this nature. We run into worthy international adversaries on all these issues who have attracted and retained people who will negotiate this year, next year, and all future years. At the same time we have people in the different agencies and bureaucracies whose term in office, is a year or two and then they go back to the private sector. Not only do we lose the personnel, but we lose the continuity, the person and the policy. It is just so disruptive.

One final question, your report states that the commission believes that a significant portion of the cost can be absorbed through existing personnel accounts and through the—perhaps elimination of certain programs that no longer serve essential needs. I have not read the entire report.

Are there specific recommendations with regard to areas of personnel or programs that do not, in your view, no longer meet or serve essential public needs?

Mr. VOLCKER. No. There may have been a comment that at the political level we didn't think all these people need to be replaced, and it could help pay for their general salary increase. But that is a small part of it.

The commission, quite specifically, stayed away from questions that raised issues of public policy apart from the personnel area that we conceived our job, and you can quickly imagine that the commission would have been split in many different directions given the breadth of the membership and the full spectrum of political opinions we had reflected on that commission.

There was one thing that held the commission together. I think they all felt that this is an important problem that needs urgent attention and that they could coalesce on these recommendations focused around the idea of having a better supply of able people in government, but we didn't attempt to debate issues of public policy behind that.

Mr. RIDGE. Thank you. Thank you, Mr. Chairman.

Mr. FORD. Thank you. Mr. Dymally.

Mr. DYMALLY. Mr. Chairman, I know it is the lunch hour, and I shall not hold up the commission any longer. I do want to make a couple of observations and a few anecdotes. I also have one question for Mr. Ornstein or Mr. Staats.

In the State Department authorization bill which we passed last Wednesday, I believe, we have a three-year internship program for the State Department to recruit from the sophomore year, and written into the bill is experience on the Hill, and an overseas experience also, and they can take the exam in two or three parts.

We also provided funds for the State Department to make grants to universities and colleges for the recruitment. I agree with you, the internship program is a very important one.

Talking, Mr. Chairman, about commissions without Federal funds, two years ago we enacted regulations to study the U.N. and as of today there has been no takers because we put no funds in it. We specifically stated no Federal funds shall be used, so we amended that in the State Department authorization bill and gave them $100,000 to get started. I understand they have takers already. So you are right. If you don't have Federal funds, nobody wants to take on that burden.

Mr. Volcker, I was disappointed but nonetheless surprised to hear your story about the foreign student because if you listen to the talk shows, the people who are opposed to immigration are people with heavy accents, foreigners who have come here through the generosity of the American public. They don't want anybody else to come in.

I recall when I ran for Lieutenant Governor, I was up in Northern California, and I had a reception, and a woman who was there said, "part of the problem we have is too many foreigners in the country," with an accent as thick as the San Francisco fog. In my heavy accent I said, "Thank you very much. I understand what you are saying."

Mr. Volcker. The "nobody after me" syndrome.

Mr. Dymally. That is right.

Last year, when debate was taking place—or the year before—a young Federal Judge in Los Angeles invited me to lunch and obviously took me to the cafeteria and bought me a sandwich. We couldn't go across the street to the sandwich shop on his salary. He took me to a room, and there were so many Federal Judges there, I was intimidated. I thought I was going to be sentenced, but they all were complaining about their sons and daughters in college and for being at the point now that they have used up their savings. They could no longer hold out very much longer. Some of them were in the private schools obviously and had to pay $14,000 and $16,000 tuition out of a take-home of not much more than that, but it is a serious problem.

Every week during the debate on the pay raise, he called me for a meeting with the judges. I was so embarrassed to tell him that nothing is going to happen, I never showed up. I kept telling him to write letters. So it is a very serious problem.

But I note in your report you weren't very specific on the pay raise. You kind of slid by asking for a pay raise. You talked about the legislative pay raise, but didn't zero in, you weren't a big advocate for the congressional pay raise in your report.

Mr. Volcker. I think in a balanced way with the honorarium question, we dealt with it symmetrically. We said, no doubt about it, and this reflected our observation that what happened in January—we did say and contemplated that you may not be able to increase congressional salary, but that if you didn't, we wanted to make the point that you ought to go ahead and deal with the others, which I personally think may be in your own salary interest anyway down the road. But that you should not hold everybody else hostage to your salary if you are unable to increase yours.

I would go beyond that—which came up earlier—even if you were not able to increase Cabinet officers, I think the top levels of the Civil Service ought to go up even though that violates common sense in saying that subordinates shouldn't get paid more than their superiors. That is not appropriate long-term policy, but if that is the only way you can begin dealing with this problem, so be it.

Mr. DYMALLY. One final observation. Ms. Morella mentioned the National Institute of Standards. We have a very serious problem now because foreign countries are developing standards to correspond with the standards of the Middle East, let's say, or Latin America. I had legislation to do that. The administration would not support it. We had to develop legislation on a voluntary basis, much as your commission.

So the private sector now is funding the whole question of standards. We are losing to the British, in the Middle East, and the Japanese, and we are trying to put together now a private sector response to that because we can't comply with the standards of other countries because we don't have any set standards ourselves to compete with, let's say, the change in refrigeration or the change in locks, or something like that. So it is a serious problem because the National Institute is underfunded. That is something we need to address.

Finally, Mr. Ornstein, why do you suppose that the media became so hysterical about this pay raise? What was it in the psyche of the people who just mounted this hysterical campaign?

Mr. VOLCKER. About the salaries?

Mr. DYMALLY. Yes.

Mr. VOLCKER. You are the expert on feelings of people, Mr. Ornstein?

Mr. ORNSTEIN. I talk to a lot of media people.

I think this was out of proportion to what has happened in the past very clearly, but not out of direction. In the past, we have had this deep cultural visceral antipathy toward paying public servants, period, and any time a raise comes up, we see a public reaction, and we see the media respond to that.

I think a couple of things happened here that were different; one was the accumulation over time with scandal after scandal and scandal that have come to dominate the news now. It crowds out other news. Even the hint of a possibility of a rumor of a scandal becomes much more news-worthy. The antipathy toward public service was higher, and the press at least decided to play on that.

The numbers were unfortunate in retrospect. Fifty-one percent was a rallying point. In retrospect, I think it was handled badly in that regard.

Finally, we have this phenomenon of radio talk shows, which is a much broader and more significant one than I had anticipated. They saw it as great publicity for themselves and picked up on that as well. When you have a ground swell, not from the mass public, but from a smaller group of them, certainly any time there is a conflict of that sort and any time it involves the political arena, the press are going to view it as news-worthy, and certainly Ralph Nader contributed to it as well.

I said to Mr. Nader the day that the vote took place, the day before the vote, I spent most of the day going from one place to another debating him. Afterwards I viewed his actions with great dismay personally because it seems to me there are two rewards for public service. There is a financial reward which is a very important one, and there is a psychic reward.

We on the commission have tried to deal with both of those. I thought his actions not only destroyed any hope of doing something about the financial reward but had a serious deleterious effect on the psychic reward. That portrait out there reinforces this notion that they are all corrupt, they are cheats, all greedy. The way they attacked this issue resulted in a pyrrhic victory basically. It resulted in great discouragement of people to go into the public service, certainly a crushing blow to the morale of those who were there and a reinforcement of the notion that they are all corrupt.

We are going to have to work over time, all of us in this room, to try to repair that damage.

Mr. DYMALLY. I have just two brief closing remarks. One, I don't know if my district is unique, but I praised them for their intelligence. I have had a series of forums before and after the pay raise issue, and the question never comes up in my district. The newspapers have raised a lot of Cain about it. Second, in the last eight years I have had 11 Koreans sent from the National Assembly to come and do fellowship in my office, and the Asia Foundation, as you know, has brought a number of Asians here.

I think this antipolitician attitude is unique to America. I don't experience it as I travel all over the world. I don't travel as much as my friend, Mr. Solarz, but I get around. Most foreign countries respect their politicians. In fact, I think most politicians are too elitist. They don't let people come in. We are open in that sense, of course.

But it is, I think, uniquely American. I don't understand why it is that we hate our politicians so much. As soon as they lose an insurance claim in court, the first person they come to is a politician to go to the Insurance Commissioner to try and open the case, even though the case has been adjudicated by the courts. Constituents use the system, and when it fails, as a last resort, they come to the very politician that he doubts. It is a disturbing trend. I find it getting worse.

I felt my tenure in Sacramento was a very rich and rewarding experience. I never worried about pay because I didn't take any abuse as one takes here in the Congress. I don't know if it is uniquely Washington, but in California they were very enjoyable days, and I took a lot of pride, during the Kennedy years, a lot of pride in public service. Now you get beaten up so badly, and that is why the young man at Harvard wants to go into the private sector even though he is thankful for the generosity of the American public.

Thank you very much, Mr. Chairman.

Mr. FORD. Thank you.

The members of the committee who could not be here will have questions that they will submit to you and ask you to respond to for the record. Their questions and your responses will be printed contemporaneously in the record of these hearings with your testimony today.

I also have an opening statement from Mr. de Lugo of the Virgin Islands who couldn't be here. I ask unanimous consent that his opening statement be placed at the beginning of the hearing with the other statements that were made.

Without objection, so ordered.

I would like to get back to the question of political appointees. During the years that I have been here the concept of what is and what is not proper—in terms of the mix of political and career employees—has been determined primarily by the politics of the moment.

The reason for the 10 percent figure in the 1978 Civil Service Reform Act was that President Carter came under a tremendous amount of pressure and criticism from members of my party in what they perceived to be a slowness in replacing Nixon appointees in key positions, like regional offices. We had instances where even members of this committee would have a regional director in an executive branch agency still running the campaign. He or she was putting out press releases making the Member of Congress from that region responsible for everything bad, but never responsible for anything good. It created a real angry group here. Tip O'Neill designated me to go with our then staff director to meet with people at the White House and see what we could do about it.

When we described how Presidents had accomplished putting their political people in career positions, they wanted to restrict that practice.

We came up with the formula of a 10-percent ceiling on noncareer appointees in the Senior Executive Service as a way to get regional directors and people out there reflecting a different philosophical approach to government than had been the case. Most of the people they were complaining about were not Ford appointees, they were hold-overs from the Nixon years, and very few people had a lot of confidence in them.

But I have to admit on the record that what we were doing was just giving a political response to an immediate problem. Not much thought was given to what was going to happen in the future in increasing the number of appointive positions for a President by that much.

There is not, in fact, much in the way of limitations on the administration in how many people they can appoint. There is a limitation on the SES, but that was done to make it appear like it wasn't a political thing. It was really establishing a new level of professionalism.

I think we made a bad mistake with the way we structured it because, as you have identified, we are now getting to the point where the political appointees go too far down in the personnel levels. I deal more with the Labor Department and the Department of Education than any other governmental departments, and over the years I have seen the change. In the 1960s, when we passed new education programs, we had people leaving positions in state institutes of public instruction, colleges, ect., to come down and help us get a new program started. It was a very exciting time, because we could attract an awful lot of high-powered, experienced people to those jobs.

The contrast with that was when Mr. Laingen and his colleagues come back from Iran in 1980. The gentleman who had been the superintendent of our school in Tehran served his time as a hostage.

He was not on the government payroll because he was hired by the local school board. When he got back, he took a position in the Department of Education. He was terribly disappointed to learn that of the 17 top people assembled by the administration, he and Ted Bell were the only ones who had any kind of experience as an educator or educational administrator, or could call themselves an education professional in any sense of the word.

Those people with no background or experience in education administration in turn, were superimposed on the career people over there who had the institutional memory of the development and philosophy of Federal aid to education. If you read Ted Bell's book, you find that one of his greatest frustrations was that he had layered on him a lot of people who didn't know what they were doing. One of the reasons for creating the Department of Education was to assure the private schools that their interests would be addressed. The concept was that there would be a person who would be a pleader with the Secretary for the interests of non-public educational institutions so that they would have somebody at the table with their particular parochial interests in mind.

What we found in 1981 is that we had a fundamentalist preacher who then proceeded to go around the country making speeches about getting God back into the classroom, and the position just got lost. The Department was totally disconnected from the groups that had been promised that they would have a voice and the purpose for which that voice was to be at the table. That is happening more and more, whether you get good people or bad people.

One thought usually comes to mind when I read editorials in papers which advocate limiting Members of Congress to serving not more than eight years, because eight years is plenty of time, and you can't get new ideas otherwise.

In my 25 years here, I have heard the same new ideas in some instances in every new Congress, and so I don't waste as much time as I used to going back over that new idea that was a new idea presented to us in 1965 and again in 1967 and again in 1969, because I know it won't fly.

There is a distinct advantage to a member having an institutional memory. When you look at the committee staff, you see institutional memory. We used to look at the people who came with the secretaries when they came to testify who carried years of experience with them and could respond and direct the Secretary. They could advise on things that had been tried, that this is not something we do, we tried it before, here are the problems. What we are hearing about career blockage in the civil service is similar to what I used to hear as a young lawyer about the danger of going into a big law firm back in the 1950s. One of the things you have to watch is whether the senior partners have sons or nephews who are also lawyers, because about the time you work yourself up the ladder to become a partner, you are going to find the nephew, Charlie, or the son, Charlie, installed ahead of you as one of the senior partners.

The same sort of thing seems to happen with the Civil Service now. Somebody here mentioned it. When you look at the concept everybody would like to believe they are upwardly mobile, nobody wants to believe they have gone as far as they are ever going to go.

When you reach that stage, you are already on your way toward retirement.

We have a number of ways, not the least of which is with the number of political appointees and pay caps and other things, that say to people as they reach their peak of effectiveness in government service, there is really no place for you to go, and some new person with a wholly different ideology and their own agenda is going to step in ahead of you, so don't bother planning too far ahead.

In addition to that, there is the constant barrage Federal employees have been under for almost 12 years now. While President Carter did not attack pay and pensions and other things as President Reagan's Administration did, President Carter nevertheless put this committee in a terrible pot of boiling oil when he described Civil Service reform as a law that would make it easier to fire Federal employees. That is what got attention in all the newspapers. That is what got attention with all the Federal employees. They said, "We don't believe in this thing because this is obviously some ploy to made it easier to RIF us." So we had a terrible time trying to rebuild the confidence in the employees that there was anything good in the Civil Service Reform Act because it was characterized in that narrow way.

Every budget that has come to us since 1981 is predictably one that wanted to close up the Post Office and turn it over to private enterprise, cut the pensions for the employees, because they are overly generous—something we found not to be true—charge the employees more for their health insurance and reduce the cost to the government, freeze pay, and do other things of that kind.

This year we see a difference. When Mr. Reagan's budget came up here in January, we looked at it with dismay because it suggested that this committee would have to find out of Federal employee compensation and benefits between $8 billion and $8.5 billion in savings. A good deal of that was all sketched out by Mr. Miller before he left.

I am pleased to say that in negotiating with this administration, we are now down to a figure in the neighborhood of $3 billion, and I am only about $300 million apart from them at this moment in being able to do it without doing serious damage or any damage, for that matter, to the employees. There is evidence to me, at least represented by the Office of Management and Budget, that we are dealing with more reasonable people.

A number of the most distrubing cost-cutting measures that were in the Reagan budget have not been on the table. For weeks prior to this agreement that was announced in the Rose Garden, a good many of the things that had Federal employees upset in January went by the wayside. But there was no press conference to announce they went by the wayside, therefore the employees are going to wait and see.

In the meantime, until late this fall, they will still have in their mind that something is coming at them that will place them at less advantageous position than they formerly enjoyed. By virtue of the process we have to sit here. We can't negotiate with OMB or the White House and run out and say, "They have agreed that they are not going to do this to you."

With that in mind, we would hope that if any of you have the ability to do so, that you could encourage the White House, to participate in the hearings on this report. We have had a number of discussions as recently as this morning. The indication was that the White House Personnel Director had asked OMB to designate somebody to come up here, but we have not heard from OMB yet, and we don't want to proceed without the administration.

I don't believe we are going to have very much success in many of these things, or perhaps any of them, unless we develop a working relationship with the administration. I am optimistic. I was never able to do that in the eight years of the Reagan Administration. Maybe I am naive, but I think I am dealing with a different philosophy of what the Federal Government is now. I have not heard this President ever use the Federal employees as a whipping boy. We are going to do everything we can to try to work formally or informally with them so it doesn't look like we are setting up a confrontation over whether we should raise pay or improve conditions in any other way.

To the extent the prestigious members of your commission have access to people who might encourage that kind of dialogue, you could be extremely helpful to us. I would hope, before we get too far down the road, that we would have people representing the administration's point of view commenting on this report and its recommendations so that it is clear that the administration has an input into whatever the committee then takes as its direction.

I solicit your help, and I want to thank you for what you have been doing and what you have done with this report. You can see that even here this morning we inevitably get back to pay, pay, pay. It is at the center of everybody's consideration. If we announced the next panel would be here with suggestions about a pay raise that included Congress, we would have this room full of television cameras. We have tried to avoid doing that. We have structured the hearings in cooperation with the minority to get the people who want to talk about a broader approach to the whole question of how you get and keep the kind of people that the taxpayers would like to have handling their affairs.

It is not going to be easy to avoid having the self-proclaimed leaders like Nader and others to jump the first time there is a specific recommendation, or the first time we admit we are looking at a specific piece of legislation, and have our friends in Common Cause say, "No, first repeal honorariums, then think about pay."

I want to tell you if that happens, anything I bring out of this committee is dead before it gets to the Floor. I am not at all sure I can convince the leadership on both sides to bring up legislation like that. We will only be able to move legislation which an overwhelming majority agrees with and which has a rational explanation for, first, why doing anything is necessary; and second, why doing what we propose is the best way to approach the problem that has been identified.

You have provided us with a framework. I hope we will be able to proceed with as little adverse reaction as possible. One of the unpleasant problems that members of this committee have to deal with is that most of us are known and re-elected on the basis of what we do on other committees. As a matter of fact, the biography

I use to be introduced at rotary clubs and similar groups in my district does not include identifying me as chairman of this committee. It talks about my ranking position on the Education and Labor Committee. That is a plus for me. But dealing with Federal employees' pay and benefits is a minus for me. The prevailing attitudes of factory workers in blue collar districts, such as I represent, is that ever since they found out how much an air traffic controller could make with overtime they think that Federal employees are dramatically over-paid.

Members of this committee all face that. But it seems to me that we are going to be put to the moment of truth during this Congress. It won't be too long before the same people in the media who have been so quick to criticize any efforts to move forward on this matter will finally see the light. Then they will be saying, well, if it is true, as the Director of NASA says, that the program is in danger of floundering because its top managers are leaving in such numbers, and if it is true that the National Institutes of Health does not have anybody in charge of coordinating cancer research, and if it is true that IRS is losing billions of dollars because it doesn't have skilled people directing their activities, and if it is true in fact that the President is not being protected as some people believe he should because we are short changing the Secret Service, and if it is true that the CIA is losing many of its analysts with strong academic experience to colleges and universities, it must be this committee and the Congress that is responsible for letting this happen.

So we have to take the unpleasant position of doing a very unpopular thing, hoping that history will judge us fairly, but not getting very much help along the way.

I already have reactions from a statement by Dave Broder, who is one of the best political columnists around. He mentioned in passing a few weeks ago that Senator Glenn and I were thinking the unthinkable of de-linking Congress from the executive and judicial pay proposal.

I have had almost as many of my colleagues talk to me about that as all the other issues in both of my committees combined. They said, "You wouldn't do that, would you?" And I say to them, "Well, I hope I don't have to." If we don't do something, they will be looking for scapegoats not too far down the road, and the scapegoats are going to be this committee in particular and Congress in general. I want to assure you that most of the members of this committee understand that.

While it is not going to be pleasant, we intend to press ahead with your report and recommendations.

Mr. VOLCKER. I think I can speak for all members of the commission in expressing our appreciation, not just for this opportunity this morning but for the leadership of you yourself as chairman and Mr. Gilman and the committee in being concerned with these issues.

All of us have some understanding of the difficulty of getting appropriate and constructive attention to this issue. I think you will find it easier to work on the basis of our own reactions with President Bush's Administration, and we have high hopes of something constructive coming out. We thank you very much.

Mr. FORD. If it is any comfort to you, the Federal Government is not alone in dealing with this problem. I started my career as a lawyer and had among other clients, teachers unions. In those days teachers unions were on the cutting edge of acquiring new benefits for public employees in general, because they were extremely popular in the early 1950s. As time went by, however, we discovered if you are going to do something for public employees, you had to worry about how much you paid garbage collectors and policemen—not teachers. The teachers became unpopular as soon as their pay started to approximate the average worker's pay.

You can't use teachers today as an effective way to make the argument that public employees are under-paid because, after all, they have a regular job, and they get a vacation, and they have health insurance and all these other things. I don't think you can even use garbage collectors as an example any more.

I find that my constituents don't discriminate against Federal employees when it comes to the suspicion that all public employees are useless expenditures that they have to pay for with their taxes.

Mr. VOLCKER. Until they want the garbage collected.

Mr. FORD. Or a policeman.

Mr. VOLCKER. Or a policeman, that is right.

Mr. FORD. Thank you very much, gentlemen.

Mr. VOLCKER. Thank you very much, Mr. Chairman.

Mr. FORD. The committee will stand adjourned.

[Whereupon, at 1:00 p.m., the committee was adjourned subject to the call of the Chair.]

[The following response to committee questions was received subsequent to the testimony of Mr. Volcker:]

Background: The Commission's report and your testimony make a strong point of the need to decentralize personnel management and afford agency heads greater flexibility in managing their programs. You also recommend that agency heads be given greater freedom to hire and fire personnel.

Question 1: Given the fact that federal employment is designed to be governed by merit principles, do you envision any tensions between delegating personnel management and sustaining the merit principles upon which civil service is based? What role do you envision for the employee unions?

Response: The pursuit of merit principles cannot be easily legislated or guaranteed by simply adding more rules and regulations. Personnel managers do need clear, central policy, and careful policy guidance by the Office of Personnel Management. A decentralized system of agency-specific personnel management needs to have flexibility and good management, with central policy guidelines, and clear oversight by the Congress and the Administration. This flexibility to manage, including greater freedom to hire and fire personnel, would encourage greater accountability in managers.

We see the role of labor unions in a more active involvement in some of the personnel management experiments. However, inasmuch as the Commission did not focus in detail on these experiments, we must defer to other expertise in that regard.

#

Background: I share the Commission's fear that the financial disclosure process, while obviously very important, may deter qualified people from accepting appointment.

Question 2: Would any of you care to comment on how we can strike a balance in this regard?

Which seems the greater deterrent to public service, the financial disclosure process or the spector of the tax penalties of divestiture requirements? That is, are potential employees more disinclined to seek government employment because they do not want to disclose their holdings or because they may have to sell off their holdings to avoid conflicts of interest and thus suffer adverse tax consequences generated by those sales?

Response: With regard to financial disclosure, the Commission did not consider in detail how conflict of interest laws should be changed to facilitate the recruitment of good presidential appointees. We do offer the following observations and recommendations.

While it is important that the ethical intent of financial disclosure remain intact, some changes in the requirements may be useful. Many presidential appointees, according to the NAPA study covering 1964-1984, found filling out financial disclosure forms to be extremely burdensome and time consuming. Many had to hire accountants and lawyers to do it for them. Simplification of the forms would be useful, as well as a standardization of the information required by the Office of Government Ethics, Congressional committees, and the White House.

Since all presidential appointees have to disclose their personal finances and only some are forced to divest assets, and only some of those must sell during poor market conditions or unfavorable tax situations, it seems that financial disclosure is the greater problem. But there is no easy solution to the problem. The government must be assured that presidential appointees with large holdings in private concerns do not act unethically to favor those firms. Yet appointees' privacy is not fully protected. One possible compromise would be a requirement that only broad categories of the level of investment be disclosed.

#

Background: In recent years, agencies have been required to "absorb" all or most of any comparability pay increases. Concerns have been raised recently that this "absorption" is beginning to impact on agencies' missions and may be causing reductions in force.

Question 3: Would you expand on your statement on page 39 of the Commission's report that the sums needed for substantial pay reform "can and should be absorbed through existing personnel accounts."

Response: In our Regional dialogues we heard about some effects of tightening resources, and some of the tightening was probably due to the type of absorption you have described. In some of these cases, this "absorption" seems to have come from operations that were already stretched thin and from working levels.

This is not the type of absorption we are recommending. Our report talks about avoiding across the board absorption that might undermine vital missions. We recommend absorption targeted toward reducing redundancy and overlapping of organizations and operations. We also recommend improvements in structure of jobs that might reduce the number of supervisory jobs and the number of middle management jobs. As you know, we have suggested that the number of political appointees be reduced from 2,000 to 3,000, and the savings achieved be applied to improving salaries.

Absorption must be carefully monitored so that it improves rather than damages performance. We have urged that the President and Congress monitor any absorption and ensure the effective performance of government.

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

THURSDAY, APRIL 27, 1989

U.S. House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room 311, Cannon House Office Building, Hon. William D. Ford (chairman of the committee) presiding.

Mr. Ford. The hearing will come to order.

This is the second hearing on the recommendations of the National Commission on the Public Service. Last week we had the privilege of hearing from the chairman of the commission, the Honorable Paul Volcker, who was accompanied by several members of the commission.

Mr. Volcker and his colleagues highlighted for this committee the more salient features of the commission's recommendations for rebuilding the public service, particularly the civil service of the federal government.

This morning we will hear from representatives of the General Accounting Office, the agency which has probed the workings of federal agencies, and has submitted numerous recommendations on ways to improve the adequacy and efficiency of public service.

In addition, the former administrator of NASA and representatives from the Department of Health and Human Services and the National Institutes of Health will provide testimony on the difficulties experienced by the respective agencies in recruiting and retaining quality personnel to operate and manage some of our nation's most sophisticated and critical programs.

The committee is also interested in the reactions of the witnesses to the broad recommendations of the national commission. It is our hope that today's hearing and those to follow will help to heighten the citizen perception and appreciation of the value to their lives of having a highly skilled and knowledgeable public work force to manage the vagaries and complexities of the nation's business.

We are also hopeful that this airing of the commission's recommendations and the spotlighting of agency personnel problems will sensitize members of Congress and the administration to the urgent need for legislative and administrative remedies.

Having said that, I am sorry to say for the record that both the majority and minority have been trying to get somebody's attention at the White House to ask if anybody representing the administration could come over and give us their reaction to the Volcker

Commission report which was presented in person to the President before it was presented to us.

We were told we would get a phone call from OMB, but to this date we have not received one. Apparently OMB is too busy to be bothered with this issue.

On April 18th, Mr. Gilman and I wrote a joint letter to the President which I will now place in the record.

[The information follows:]

ONE HUNDRED FIRST CONGRESS

WILLIAM D. FORD, MICHIGAN, CHAIRMAN

[illegible]

House of Representatives
Committee on Post Office
and Civil Service
Washington, DC [illegible]

[illegible]

April 18, 1989

The President
The White House
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Mr. President:

The Committee on Post Office and Civil Service has scheduled hearings on the report of the National Commission on the Public Service. The lead-off witness will be the Honorable Paul Volcker, Commission Chairman and former Chairman of the Federal Reserve Board. Also, testimony will be received from public officials, associations, and organizations representing a broad spectrum of the Federal service.

The Committee's exploration of the Commission's excellent report will not be complete without the reaction of your Administration to the Commission's recommendations for Rebuilding the Public Service.

You are cordially invited to send the representative who is in the best position to articulate your Administration's reaction to the Commission's recommendations.

The Committee's oversight of the Federal work force calls for an initial concurrence in the Commission's conclusion that its message is "both simple and profound, both urgent and timeless." We hope you agree, and we look forward to your timely designation of a spokesperson to represent your Administration at these important hearings.

With kind regards.

Sincerely,

William D. Ford

WILLIAM D. FORD
Chairman
Committee on Post Office
and Civil Service

BENJAMIN A. GILMAN
Ranking Minority Member
Committee on Post Office
and Civil Service

Mr. Ford. We have had not so much as a postcard in response from the White House. This indicates to me that nobody over there cares what we are doing with respect to another attempt to do something about pay and working conditions for federal employees.

I do not think that is consistent with the impression that most of us have of this President. I think it may be bad staff work over there someplace by somebody who is over his or her head, or out of his or her depth, and does not realize that this is an important issue. We will pursue our request, irritating as many people as we can until we get the attention of the right person.

Perhaps when the Chief Justice is here next week, they will realize that if he is willing to follow an extremely rare precedence and testify on compensation, how important the compensation issue is. As I understand it, he will be the first Chief Justice since Chief Justice Hughes in 1935, to testify before a Congressional committee. Perhaps that will impress some of the minions at the White House of the importance of the issue.

I am sure it impresses people like Dr. Fletcher here this morning. I have talked with him enough to know how strongly he feels about the future of the program that he was in charge of until very recently.

Our first witness is Dr. Fletcher, the immediately former administrator of the National Aeronautics and Space Administration. Who do you have with you, Dr. Fletcher?

STATEMENT OF JAMES FLETCHER, FORMER ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; NOEL HINNERS, ASSOCIATE DEPUTY ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; AND HOWARD ROBINS, ASSOCIATED ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Dr. Fletcher. Thank you, Mr. Chairman. I really appreciate the opportunity of appearing before you.

Mr. Ford. Would you identify the people with you.

Dr. Fletcher. Yes, I planned to do that. With me this morning is Dr. Noel Hinners, who is the third in command, the Associate Deputy Administrator of NASA, and I do not know whether it had anything to do with the pay raise or not, but he also is leaving NASA I think it is the 13th or 14th of May, and then Dr. Howard Robins, who is Associate Administrator at NASA, and they will give facts and figures if necessary on our personnel situation relative to the pay raise.

As you said, I have served as Administrator of NASA twice, once from 1971 to 1977 and again from May of 1986 until April 8th of this month, and I am here as a private citizen, but I am very concerned about the problems at NASA and particularly on the problems of people leaving NASA because of the difficulties with the pay.

Mr. Ford. Dr. Fletcher, without objection your prepared text that you have submitted to the committee will be inserted in full at this point in the record. You may add to it, supplement it or highlight it in any way you think will be best for the record.

[The prepared statement of James Fletcher follows:]

STATEMENT

OF

DR. JAMES C. FLETCHER

I'd like to express my gratitude to you for allowing me the opportunity to speak today. I have had the honor of serving as NASA's Administrator from 1971 to 1977 and again from May 1986 to April of this year. I am here today as a private citizen and advocate of the National Aeronautics and Space Administration, its mission, and its people, to strongly urge that Congress and their constituents reconsider the Federal executive pay issue. The defeat of the pay raise for the United States Government's legislative, judicial, and Senior Executive Service members in February of this year dealt a blow to the hopes and expectations of our Government's top level of management, particularly at NASA.

NASA has a Senior Executive Service corps of more than 500 individuals. These dedicated public servants manage a Civil Service contingent of more than 22,000 and supervise the activities of an onsite, private contractor force of over 29,000. They have oversight of $8.6 billion in procurement contracts which utilize tens of thousands of private contractor personnel, and they bear responsibility for a total annual budget in FY89 of $10.9 billion.

I do not believe that the American people wish to have their Federal programs, both at NASA and throughout the Government, managed and directed by anyone other than the very best executives in this country. They would not care to see America's Space Program growing dim in the shadow of another country's achievements in the frontier beyond Earth. Yet, the message transmitted with the defeat of the executive pay raise is that there is a gap between the high standards and competence Americans expect from their public officials and the compensation they are willing to give these individuals to exercise and preserve these standards.

The "typical" NASA Senior Executive Service employee is 50-55 years old, has earned at least a Bachelor's degree and pursued some post-graduate study, has 25-30 years of service with NASA, and is at the ES-4 pay level of $76,400. Forty-six senior executives have been with NASA since its inception in 1958. Sixty-two percent of the more than 500 have been in Federal service for over 25 years. These individuals are an exceptional group who have made service to their country a priority in their professional and personal lives. The majority at NASA are among those courageous and daring individuals who stepped forward in NASA's early days to answer the challenge of America's space race and command the lead for our country in a highly visible competition. I need not remind you that they are among those who have brought immeasurable pride and satisfaction to America.

The Federal Government's career executives, the Senior Executive Service, are patriotic men and women who are making a certain degree of personal sacrifice in their careers performing high level jobs at pay that is, in many cases, significantly lower than that received by their counterparts in private industry. The report of the National Commission on the Public Service, the "Volcker Report," describes this as a "public service differential," which is certainly understood by NASA employees, who have in many cases traded higher salaries for the opportunity of working on the leading edge of aerospace technology. However, when the pay disparity becomes too great, and the challenge of exciting work can be matched elsewhere, the temptation to leave the great responsibility and mediocre pay behind and provide more abundantly for one's family is a call that can seldom go unheeded. In our country the ideals of doing our best at a job and providing the best possible standard of living for our families are accepted as sensible goals. We cannot expect Government executives to be cut from a peculiar cloth that forgoes these ideals.

Today NASA can foresee severe difficulty ahead in maintaining its present executive level, both in quantity and quality. Nearly twenty-five percent of NASA's Senior Executive Service contingent are eligible for immediate voluntary retirement. In 5 years, 61 percent of the current strength will be eligible. When NASA's senior executives leave, it is increasingly difficult to replace them with highly qualified candidates. NASA has traditionally been able to find a wealth of executive level talent from among its own ranks. In 5 years, NASA's GS/GM-15 retirement eligibles, a source of superior technical and executive talent, will nearly match the senior executive portion, with 53 percent of current strength in a position to retire. There are not sufficient numbers of highly capable and experienced people to replace them, since past hiring restrictions have left a prominent gap in NASA's 35-45 age group that would normally fill in.

Experience is the most important factor in the quality of the critical decisions necessary in a business as unforgiving as the space business. In its discussion of "Pressures in the System," the Rogers Commission report mentions that a contributing factor to the Challenger accident was that while the flight rate was increasing, a variety of factors reduced the number of skilled personnel available to deal with it. These factors included retirements, hiring freezes and transfers to other programs like the Space Station.

Between October 1986 and February 1989, 63 of NASA's senior executives resigned or retired. Recently, four high potential executives, with an average age of 47, left before retirement to assume top management jobs in private industry, equivalent to the ones they held in NASA, paying $150,000 or more yearly. Those who cut short their Federal careers typically leave NASA for much greater remuneration than those who remain until retirement. The significantly increased income is more than enough to induce them to forego accumulating future retirement benefits. To make matters worse, since I announced my retirement, several individuals, key to the recovery of NASA, have also announced theirs: Jim Odom, Program Manager of Space Station Freedom; and Noel Hinners, Associate Deputy Administrator, who has been key to the revitalization of the NASA institution. At NASA Marshall Space Flight Center in Huntsville, Alabama, three senior executives have announced their resignations: John Thomas, Manager of the redesigned Solid Rocket Motor; Bill Sneed, Assistant Director for Policy and Review; and James Downey, Manager of the Spacelab Payload Project. I am personally aware that an additional 23 of 53 senior executives at Marshall are eligible for immediate retirement. Even worse, I am concerned that we have not seen the full impact of the defeat of the executive pay raise, which has been a relatively recent event. Unless this hemorrhaging of key NASA personnel is stopped soon, NASA will be once again in a critical situation, which will threaten its ability to carry out its mission.

NASA management can well understand the Volcker Report's finding that half the Federal Government's personnel officers say that inadequate compensation has become a significant hindrance in attracting the people they need. Except for a brief period after the Challenger accident, with people returning to help put NASA back together, NASA had no success at all in recruiting active senior executives from private industry. Recently, five individuals from the private sector were approached regarding the Associate Administrator for Aeronautics and Space Technology position and all declined consideration. Inadequate compensation was a major factor as were post-employment restrictions. The position of Director, Microgravity Sciences Division, in the Office of Space Science and Applications has gone without a permanent incumbent for several years. It is currently filled on a temporary basis with an assignee from industry through the President's Executive Exchange Program. This is not the most desireable way to staff a critical, highly technical program requiring continuity in its leadership.

Since the defeat of the executive pay proposal, the NASA General Counsel reports that inquiries about conflict of interest and post-employment restrictions have noticeably increased throughout the agency. The general impression is that NASA's executives are growing more uneasy and less tolerant of the conditions of government employment, especially pay and benefits. The suspense of anticipating relief that never comes to shore up their dwindling benefits and shrinking relative pay has become a stressful element in their lives, and many find a departure from Government a sure solution. This is particularly true as employees anticipate the continuation of the attacks in recent years on the Federal retirement program.

At its inception, NASA's charter established a system in which civilians were to manage NASA's large and complex programs. This required, and NASA provided, management expertise second to none in Government. Other agencies were able to manage either with military officers, or as in the case of the Department of

Energy, through adequately compensated national laboratory personnel. Unless there is adequate compensation for NASA civil servants, a major restructuring of NASA will be required.

I can only echo the concerns of the National Commission on the Public Service that failure to increase the top salaries in Government undermines our ability to recruit and retain top career executives to manage the essential services of Government. Unless we begin to perceive the critical nature of the pay issue and face it now, before it is too late, we may see the drain of top talent and expertise in Government turn into a torrent that, at best, will take years to recover from. The Volcker Report recommends action to raise executive, judicial, and legislative salaries to 1969 levels of purchasing power. I agree that we can do no less.

NASA today is reborn, stronger, wiser, with renewed vision to continue, step-by-step, to expand the frontiers of discovery, understanding, human experience and technology. The vision has never waned and the achievements that NASA has given the world still provide a beacon for the rest to follow. We must act now to preserve this national capability, to insure that the finest executive and technical talent leads NASA and America surely and proudly into the future.

The courage of this governing body must match that which is expected of this nation's Federal career executives. I urge you to act now to provide adequate pay levels for these dedicated individuals who give so much to America.

Thus far, I have addressed only the basic issue of pay for NASA's senior civil servants. With your permission, I would like to file, for the record, a brief addendum to my testimony commenting on some of the Volcker Committee's other recommendations.

Thank you.

ADDENDUM TO THE PREPARED STATEMENT OF

JAMES C. FLETCHER

While my testimony focuses largely on the issue of pay and, more specifically, on the issue of adequacy of pay for the Senior Executive Service (SES), the National Commission's report does touch on several other points that, I believe, have great significance to NASA.

The Commission recommends administrative decentralization and flexibility, a boon for managers of large technical enterprises where the personnel structure must evolve rapidly and fluidly in response to evolving program demands. I concur in the thought, as evidenced by the work NASA has done with OPM on an alternative personnel system demonstration, but I feel all the various experiments have been too limited, too cautious, too hemmed in by bureaucratic traditions to have really shown the way to a leaner and more productive civil service. Given resolution of pay issues, however, then flexible management would have the most important tool in hand: the ability to reward personnel performance with precision.

The Commission urges a general increase in civic education and in public service recruitment. While unexceptional as a goal, my own experience suggests that we must seek and find the means to engage our best young minds in science and engineering from grade school on or else the pool upon which the universities, industries, and federal agencies must rely for management and performance will be woefully small.

The Commission touches upon a number of other areas, all valid and important, but perhaps the one of these with the greatest meaning for NASA is the rebuilding of public trust. This is a two-way street. We have seen some twelve years of bureaucrat-bashing from the White House. Those bruises are not easily healed. We see, over and over again, intimations by the Congress that civil servants are not to be trusted. In an environment of that sort, how can we expect the best minds in the land to flock to the challenge of government service? I would remind you further that the old civil service retirement system did provide, at the end of a career, some make-weight for a severely constrained salary structure; today, the new system encourages departure, not retention. While the highest standard of ethics should obtain without question in all three branches of the government, I must note that just codifying acceptable behavior does not reverse the changes of the past decades. Public perceptions must eventually reflect public realities: public service is an honorable profession that will attract its fair share of the dedicated and the able only when the entire government lives--and is seen to live--by rules the whole populace respects and understands. It will take a long time to overcome the destructive effects of past political and ideological positions; the problem of mutual trust between the public and those to try to serve its interests will not yield to palliatives and bromides but only to sincere, continuing investments in integrity across the board.

Dr. FLETCHER. Thank you, Mr. Chairman. We have a senior executive service of about 500 people who are the ones who really manage our program, and this is out of a total of 22,000 people all together, and we supervise a total budget of about $9 billion in procurement. And so we have tens of thousands of people that depend upon the actions of the senior executive service.

A typical civil servant at NASA is about 50 years old. He gets a salary of $76,000 and typically these folks can command a salary of about $150,000 and naturally, as the Volcker Commission points out, people are willing to accept what I call psychic income to a degree; that is, there is some honor and prestige associated with service in the federal government. However, the differential between $76,000 and $150,000 I do not think quite makes up for that psychic income.

The folks at NASA pretty much are the ones who are able to place people on the moon at the request of President Kennedy. In a period of seven years from the start to the finish, they were able to achieve that goal, and many of the folks who are still at NASA participated in that program.

All of the people I know at NASA are very patriotic. They want to serve their country, but on the other hand, they just feel that the differential is too large. We, I think, in our country do accept the ideals that a good job does provide the best possible standard of living for our families as well as service to our country, and we cannot expect government officials to be any different from other people in regard to these two ideals.

We have a special problem in NASA in the sense that nearly 25 percent of our senior executive service are eligible for immediate voluntary retirement. In the next five years 61 percent will be eligible. And now you say well, that is fine, we can just replace them by younger people. But at NASA—and by the way, it is fairly common in industry, too—there is a gap between the senior folks and the younger ones coming behind. We call that the gap in age. And so, the young people that would normally fill the shoes of those that are leaving are just not there. They are much too young and inexperienced to take the places of those that are leaving.

The problem was exacerbated at NASA because of the large RIFs in the 1970s and early 1980s, and so we do have and we did not begin to hire back until fairly recently. I cannot emphasize more that experience is extremely important in an enterprise such as the space business.

The Rogers Commission itself mentions that pressures in the system were a contributing factor to the Challenger accident and while the flight rate was increasing, a variety of factors reduced the number of skilled personnel available to deal with it. And that was due to retirements then, hiring freezes and transfers to other programs then as is now becoming apparent at NASA.

Mr. Chairman, in the last two or three weeks, as I predicted in your office a few weeks ago, we beginning to lose our top people. And, unfortunately, I had hoped to stem that tide, but four very high executives—and I am not counting Dr. Hinners or Dale Myers—left before retirement to assume top management jobs in private industry. And, as I mentioned, they all received $150,000 or more yearly.

To make matters worse, several key individuals in the last week have announced their resignation. Jim Odom, who was the program manager of the space station Freedom; and Noel Hinners, as I mentioned; John Thomas, who managed the redesign solid rocket motor; Bill Sneed, Assistant Director for Policy and Review at Marshall Space Flight Center; and Jim Downey, who managed the Spacelab Program all resigned in a two-year period.

And I must say looking back over the records, Mr. Chairman, that is a record in the 30-year history of NASA for the number of senior people leaving in a two-week period.

Even worse than that, though, I am concerned that we have not seen the whole of it yet. I know about 23 more people that are planning to resign, and I have no idea of the entire impact of the defeat of this executive pay raise bill.

This is a fairly recent event, and I think it has not quite sunk in to the whole of NASA, but I can say that unless this hemorrhaging of key NASA personnel is stopped soon, NASA will once again be in a critical situation as it was before the Challenger accident, and I think this would seriously hamper the nation's program, and I hate to wait for that to happen before we get people's attention, as you mentioned.

NASA management does understand the Volcker report's findings and agrees that inadequate compensation has become a hindrance in attracting the people that we need. For example, except in a brief period before the Challenger accident when people did return to NASA to help put NASA back together again, except for that period NASA has had no success at all in recruiting senior executives from private industry.

For example, recently we interviewed five individuals from the private sector regarding the Associate Administrator position for aeronautics and space technology and everyone declined the consideration, primarily because of the pay differential, but also because of the general trend towards restrictions on civil servants generally.

Since the defeat of the executive pay proposal, the NASA general counsel has reported that inquiries about conflict of interest and post-employment restrictions have noticeably increased, and people are growing more uneasy and less tolerant of the general conditions of government employment, not just pay and the benefits, but the whole attitude towards civil servants that seems to be obtaining at this time.

We have had promises about relief that never comes, and this has become a stressful element in the lives of many of our NASA employees. As you probably remember, NASA's charter did establish the system in which civilians managed NASA's large and complex programs, and this required management expertise. Unlike the Department of Defense, who has the military officers that run their programs, and the Department of Energy, as you know, who have the national laboratories which are independent of the civil service system that manage their programs, we do not have that luxury.

I can only echo, Mr. Chairman, that failure to increase the top salaries in government does undermine our ability to recruit and retain top executives, and I certainly agree with the Volcker report that unless actions are taken to raise the executive, judicial, and legislative salaries to the 1969 levels of purchasing power, this country is in serious trouble.

NASA is back on track. We have recovered from the accident. We have a vision to continue our activities. We have good programs, and unless we act now to preserve this capability, I think the NASA program is in trouble.

The courage of this governing body Congress must match that which is expected of the national federal career executives, and I urge you to act now to provide the adequate pay levels for all of these dedicated individuals that have given so much to America.

Now, Mr. Chairman, you have asked me to comment on the other aspects of the Volcker Commission's report, and with your permission I would just simply like to file that for the record. Paul Volcker's report is very comprehensive, and I have prepared a one-page response to the parts of it that I am familiar with, and with your permission, I will submit that for the record.

Mr. FORD. Without objection, that will be included in the record.

Dr. FLETCHER. That concludes my testimony, Mr. Chairman.

Mr. FORD. Did either of the other gentlemen want to comment?

Dr. HINNERS. Mr. Chairman, I concur in everything Dr. Fletcher said. I think many of the points will come out well in the question period.

Mr. FORD. Dr. Fletcher, I have had several conversations with you and other people from NASA over the last few years about the growing sense of urgency that you expressed to us about what was happening in your agency. I wish that I could say that it is unique to NASA, but I have had similar conversations with the personnel directors of the CIA, the Justice Department, in fact, personnel directors throughout the government.

It is my suspicion that if we could bypass OMB and have these personnel directors testify in public to the things they have been telling me in private as chairman of this committee, that there would be a wave of anger across this country at how badly we have handled our affairs to allow the top management levels of our government to be drained and weakened to the extent that they currently appear to be.

In the last few days we have seen some newspaper articles about top managers leaving NASA, in which they express concern over their inability to understand exactly how new post-employment restrictions enacted into law last November are being interpreted.

Has the Office of Personnel Management issued regulations with regard to this? What is the specific document that is causing these people so much concern at the moment?

Dr. FLETCHER. Mr. Chairman, the administration has issued what they call an implementation plan which interprets the recent procurement law which did place restrictions on post-employment for government civil service, and it did a lot to relieve people's minds about post-employment, but then some of them simply talked to their lawyers on the outside and said well, that is all right. But just because—and I have forgotten which office it was—it was the Office of Federal Procurement Policy that changed that or that interpreted that law. The problem—and by the way, it went a long ways to making some of our folks less concerned—but the problem is that lawyers on the outside take worse cases, and they say that does not completely solve the problem, and some people simply said look, with the differential in pay between what I am getting now and what I can get on the outside, I do not think I ought to take the chance.

Jail sentences actually were called for in the case of possible conflict of interest. And I think that is generally the uneasy feeling that the prime reason for leaving is the differential pay, but the reason for leaving all in a two-week period is probably this recent procurement law.

Dr. Hinners. Mr. Chairman, I can concur in that since that was part of my own decision process. I did not want to leave NASA at this point. I wanted to stay at least through the transition and do all I could to help the new administrator in coming onboard. But when I looked at the potential interpretations and indeed talked to other people, it did not seem prudent for me to take an unnecessary risk, so I chose to make an earlier departure.

Now, it was not just the ethics legislation, as it is called. It was a combination of things. And, as I said to a reporter, I am beginning to feel that our government is an unreliable employer in that one cannot count on a contract, if you will, towards the future.

We see a constant changing of the rules of the game. One tries to plan ahead, and you cannot with certainty plan very far ahead with the change in rules and regulations. The uncertainty, for example, for those who do retire, the lump sum retirement is an example of the tremendous uncertainty that a lot of our people are thinking about at this point, and it is an accumulation of many things.

A lot of the impediments to getting our job done, incredible review process. While I have great regard for some of the things that GAO does, they have just doubled the staff they are putting onto the NASA programs, some of it undoubtedly good. I think frankly some of it is rather a waste of time, and it ties up a lot of our people responding to things that I feel could be better done in other ways.

Mr. Ford. I am very sensitive to the fact that the current budget process has a lot of people concerned about things that I can with some certainty say we have already resolved. But because of the way the process works, we risk losing the arrangements that we seem to have reached with OMB if we make public how far they have come in compromising with us. They do not want to appear to be less than tough.

The budget that we started out with at the beginning of the year was an almost typical budget of the last eight years, which attacked each and every one of the employees' benefits in some fashion: increased the cost to the employee of health insurance, knocked off the cost-of-living adjustments to retirement benefits, eliminated the lump sum withdrawal privilege, and a variety of other things.

I am pleased to tell you that at this point what we think we have negotiated with the Budget Committee and with Mr. Darman has all of those things off the table, that none of those things are going to happen in fiscal 1990.

I wish there was a way that we could announce it as an absolute, so that federal employees would be assured that we have reached that stage of negotiating. However, for a lot of reasons, that is not the way we are able to do it. It will not be a surety, I guess, until we actually do the legislating a little later this year through the reconciliation process. Then employees will be able to see that these benefits will be just as they are at the present time.

This has been the scenario in each of the last eight years. We have started the year with a whole list of things that are reported in the newspapers and in the various associations' publications to the employees indicating that various cuts are going to be made in their pension, their health benefits, and their pay, and then they have to wait until late in the year to see what actually happens.

I think in 1987 we were still working on the budget close to Christmastime. Thus, employees had been caught up with this fear and these threats about their pay and benefits since the previous January. It has been a demoralizing process.

As a matter of fact, some of the committees have lost years of experience with staff people who have reacted very much like your people to the terrible trauma of coming as close as we came in January to a realistic adjustment which would have carried with it, I had hoped, an understanding that compensation should not be permitted to fall that far behind again in the future.

I cannot fault the President's commission or the President's recommendations. I can fault the Congress. Both sides of the Capitol share the responsibility for what happened. I think it is absolutely one of the worst kinds of insults to the American public servant when these two-bit talk show artists can get out there and stir people up into a fighting frenzy over compensation, and you have absolute know-nothingness at its peak erupt like a prairie fire across the country. It terrified enough members of the House and Senate so that the Congress, I am ashamed to say, acted in a very irresponsible way.

I hope I am correct in thinking that the members of this committee seem to be inclined to support an approach that says that we are going to go forward with trying to raise all the boats with the tide, as the saying goes. But if the Congress chooses to drill holes in the bottom of their own boat, let them get their own feet wet without sinking the remainder of the Federal service.

I am already feeling the reaction out there from people who say with horrified tone in their voice, "you would not think of letting other people get a pay raise before Congress gets a pay raise." And I say, "you betcha, watch my lips. I am talking about getting a pay raise whether the Congress gets one or not."

It is not making me a whole lot of friends out there, but they are at least talking about it. And if I can get them talking about it, maybe I can scare them as much as Ralph Nader is able to do, and we will get something done.

I appreciate the fact that you have stayed with this issue and come back. It is important to build a record with people of your outstanding record of service to our government.

You know, for my generation, NASA was the Buck Rogers of our youth all coming true. When President Kennedy said that within ten years we could put a man on the moon, I believed him. I did not know anything about space, did not have any basis upon which to make an assessment that we would have that capacity, but I believed him.

I do not think any president including John Kennedy could say something like that to the American people today and have them believe it. I think that we have become so cynical about our government and what it is capable of that we cannot be turned on like he turned us on. Maybe we could not replicate those wonderful first ten years of the space program. Maybe we could not get the same kind of people that we got during that time to put their whole life into the program.

It will be too bad if when historians look back to see what happened to this country in retrospect they look at the present occupants of the House and Senate as the people who sat here and fiddled while the whole federal government, as represented by people who make it work, fell apart.

We all laughed as youngsters when we sat there trying to picture Nero fiddling while Rome burned. I do not remember how many years it took me—after first picturing Nero with his fiddle—to understand that it was an allegory that dealt with a period of time. I suppose you will not hear any fiddles out there, but we are doing the same sort of thing.

I told a group of other chairmen the other day that if we shared with them the horror stories we are hearing from personnel directors in the form of a spy novel, and ascribed to a foreign power the blame for what was being done to cripple the top of our government, they would put down the novel and say it was too far-fetched to be believable.

But in fact, we are doing it to ourselves. I hope that we can educate the public by having people like you tell your story to this Committee, and having wider dissemination of stories like this article in The Washington Post. It should shock people of all ages.

My generation has got to be shocked when they see two top NASA officials quit unexpectedly and learn that it is not for any of the normal kinds of exciting reasons. Rather, it is because they cannot take care of their families and their own future if they stay with us. That is pretty bad.

Dr. FLETCHER. Mr. Chairman, if I may interrupt—I think that is only the beginning. That is the tip of the iceberg. I think we have hundreds that are also contemplating early retirement, maybe retirement before they are eligible to retire because of the huge differential and part of it is as Dr. Hinners said—disillusionment with the way Civil Service people are treated.

There seems to be a constant harassment one way or another—either benefits, or this procurement regulation, or whatever and I think people are saying—I think Dr. Hinners said it right. The Federal Government is an unreliable employer and so they are going to go somewhere else, where there is more reliability.

Mr. FORD. Well, you know, we had a warning when the Ethics in Government Act came through this Committee during the Carter Administration I have to acknowledge that I was one of the members who very strenuously opposed the original bill that the White House sent to us and one of the things that the ranking Republican on this Committee and I were saying is that you are going to make it so nobody can serve in the Federal Government if they know anything, or have any opinions or any special talents.

We toned it down from our perspective to something that we thought was more reasonable, but even so, at the same time I was sitting on the Committee as the Chairman of the Committee reauthorizing all of the higher education programs and the number one brain in that Administration for designing higher education legislation was an officer of a major eastern Ivy League university and if he had stayed until we finished writing the legislation he would not have been able to return to that university, because it is a major recipient of government grants under other education programs.

So we really, sort of in this Committee passed a nice, new ethics bill that was going to make government cleaner and threw one of the brightest people we had in government on the scrap heap, saying we do not want your talent any more, because if you stay with us past, I think it was July 1st in that year that it became effective—and he was a vice president of that large university and would not have been able to return to the position that he never intend to leave fully. He came to give us some service.

I do not think we can get people like that any more, since we passed that act, because I am hearing stories of people who come in now, the Agency hands them a pile of papers and says, this is what you have to do to comply with the ethics rules and they take it home and talk to the wife and then call up and say, I do not think I will bother.

Just the other day, an assistant secretary's position was turned down for specifically that reason. That is not to suggest that ethics are not an important concern, but somehow we succumb to the idea that there is inherent in public service, whether you are elected or appointed, some venality or dishonesty that must be controlled in a way different from the way we control the rest of the population.

I have the feeling that we are not doing ourselves too much good when we have people going to outside lawyers to find out if they can stay working for us. Just the very fact that we give them enough confusion to send them to an outside lawyer to help them make a decision, can I stay on the job, which obviously they like because they have been there so long and they like the mission and they like what they are doing, or must I leave?

They have to have a lawyer help them make the decision on whether they can stay or go and still have a future and that is wrong and I hope that, with the help of people like Mrs. Morella, we are going to be able to clean it up. Mrs. Morella?

Mrs. **Morella**. Thank you very much, Mr. Chairman. I appreciate your continuing with the series of hearings on the responses to the Volcker Commission Report on Public Service.

You know, I am very saddened, too, by the people who are here testifying, because I will no longer, before Science, Space & Technology Committee, have the good fortune of hearing the former Administrator, Dr. Fletcher, appear, or Dr. Hinners. So Mr. Robins, you are going to have to do what you can to help to recruit some others.

I think this quiet crisis is not so quiet any more, and from what you say, it is going to be a loud, thunderous burst that is going to occur.

It really troubles me that we have not heard from the Administration. As you know, I have met with Governor Sununu and with Frank Wolf on the issue before the President came out with his package, which has the 25 percent pay raise for the judicial branch and the possibility that certain critical areas might receive a pay increase.

At that time, we felt that this would also be further erosion of confidence in the reliability of Federal service by picking and choosing and not including the senior executive service as well as the judicial branch in a pay increase.

I have a number of questions I would like to ask and one is for Dr. Hinners. I know NASA has worked hard on coming up with different programs, staggering the pay raise 10 percent per year and so I commend NASA for being creative about it.

Dr. Hinners, I am troubled by one of the many reasons you chose to leave public service and that is this procurement regulation. Even though the Post said that there could be a two-year to lifetime restriction prohibiting transfer from the public to the private sector, I think that that is probably not the case and I just wondered what specifically in the procurement regulation sent up the SOS and ended up being the reason why you chose this time.

In other words, we would like to think about correcting it, which is why I am asking.

Dr. Hinners. Mrs. Morella, on the particular bill—the Section 6 of the OFPP reauthorization—there is a question in my mind as to sometimes what constitutes personal and substantial involvement in a previous contract or an existing contract, and our legal people did give some—their view of a clarification of that. There is still doubt in my mind as to whether or not I was involved personally and substantially in some of those procurements. I could get some of that clarified, undoubtedly.

Then there are other aspects of it that concern your activity when you go out to industry in providing advice and information internally on a negotiation or a contract and it is just not at all clear in my mind as to whether you talk to somebody in the hallway and say, oh yes, I remember when, whether you have all of a sudden put yourself in jeopardy with potential criminal things following that.

So there is just enough uncertainty and in my case it was a question of changing the timing, because otherwise it was an accumulation of many things. I decided it was time for a career change, but I decided just not to take a chance with interpretations in that regulation.

Mrs. Morella. I wonder, Mr. Chairman, if we might in this Committee further pursue that part of it also—what the troubling facet is and with the idea in mind of clarifying.

Mr. Ford. According to the newspapers, the President has sent a package of ethics recommendations up here. We have received the message, but nobody has introduced any legislation. I presume a good deal of that will come to this Committee. At that time I would hope the Committee would do a better job than we did during the

Carter Administration, and probe more deeply into the ramifications of placing these kinds of restrictions on people.

As I understand the proposal, if a former federal employee was involved with a certain matter during the one-year period immediately preceding separation from an agency, he or she cannot contact an official in that agency on that particular matter for at least two years after separation from the federal service.

That means that if I were to leave the Congress and go back to the practice of law, and my successor as chairperson was trying to work with the retirement law—which I and Senator Stevens spent almost seven years developing—I could not come back here and consult with him or her during the two-year period following my separation from the Congress. Thus, the successor chairperson would be deprived of my institutional knowledge, and advice and counsel as to why we did what we did.

It just sounds kind of silly that even on a pro bono basis I could not use that experience for a period of time, because there is a presumption that everybody who leaves government has evil motives in returning to do business with their own government. It is getting so silly, you know, that thoughtful people are going to be doing exactly what he is saying. They are going to be talking to lawyers and making decisions about alternative employment, and we are going to lose that talent.

Dr. Fletcher. Mr. Chairman, if I can interrupt—I can tell an amusing, and it is really a discouraging story. We had a recent procurement which required a source selection official, as we call them; somebody who made a decision; and the procurement was close to a billion dollar procurement.

Normally, I would have made that decision but I had planned to leave April 8 and so I could not. So I asked my deputy if he would make that decision. He said, no way—not on the basis of this recent procurement law. Then I asked my associate deputy administrator who was sitting next to me and he said, no way; and then it finally went down to the third echelon to make that decision. Well, we cannot have that kind of thing going on very long at NASA.

Mrs. Morella. Well, I am glad we will be looking into it, Mr. Chairman. First of all, you are preaching to the preachers, you know that, and we hope to spread the word. You know, who we really should have had here listening to this is Ralph Nader, because I submit that possibly, if we do move forward as we should with pay increase possibilities, that you are going to have some of the same furor. Not quite as intense, which is why we must also educate the public.

I note that in the Volcker Commissioner report one of the definitions in there to show the lack of recognition for public service comes from the Random House Dictionary and that is the definition of a bureaucrat. It is something like, a bureaucrat is somebody who works in a bureaucracy, who follows a routine and is not allowed to make any independent decisions; and you see that whole concept right there, the connotation of bureaucracy and a bureaucrat, having the negative part of it.

I wanted to ask you about the locality pay. That is one of the recommendations in the Volcker Commission. I just wondered about whether that has an impact on NASA and what your feeling is about that part of it?

Dr. FLETCHER. Mrs. Morella, I would like to start the comment on that one, because it has been an on-going problem at NASA. We have centers all over the country, as you know, and some of them are doing all right with their current salary situation. This is particularly in hardship areas like Houston, Texas and places like that. Others are just finding it impossible.

On the West Coast, for example, Ames Research Center has not been able to retain people, nor have they been able to recruit people. What they have been able to do is to take part-time people from Stanford University, which is nearby, and that is not a satisfactory solution. So I think the idea of appropriate compensation for the geographic location of a center, in the case of NASA, or wherever it is in the case of other agencies, is an absolute must and how we do that, I do not know. But I think the Volcker Commission, as I understand it, partially addresses that problem. I would like to ask Dr. Hinners to comment on that.

Dr. HINNERS. I think some form of locality based pay is essential and I can give you a very dramatic example. We have set up a Space Station headquarters office, out near Reston, Virginia and we are trying to staff that in large part with people who we would like to bring up from Houston, or from Huntsville, Alabama, from Marshall Space Flight Center.

Of 27 offers made to people from those centers, 25 were turned down because the cost of living is so much higher here in Washington than either Huntsville or Houston that those people say, I just cannot afford to move and we have no way to adequately compensate those people for making a move up to the Washington area or to a headquarters job.

Dr. ROBINS. This problem has been going on for a number of years. In looking back, in recent years we have had less than 100 people a year transfer up from our field centers to headquarters. We do not think our entire headquarters executive staff ought to come from our field centers, but certainly the greater majority, and so we are being forced to hire more and more outsiders and of that group that transfers here to headquarters each year, that less than 100, over 60 percent are from one center and I am sure you know what that is—namely, the Goddard Center—because they do not have to relocate. It is a very, very severe problem.

Mrs. MORELLA. I just have one other question and that is, trying to attract the talent pool, which is why I got into the locality pay. You mentioned the gap that you have got—those people who are coming in who are young versus those who are experienced, who have been there for a while.

There is no doubt, we must do some recruiting on college campuses and at high schools for people to get involved in public service. Last year, I did an internship program—one student from every high school in Montgomery County, Maryland came to Washington and we put them through the paces of the Executive Branch, Legislative Branch, Judicial Branch and one of the things they did is, they went over to the space headquarters here in Washington and Captain McBride showed them all about space.

They saw the movie, they talked about it. They left at the end of that week and that was one of the highlights, even though they had met with Sandy Day O'Connor and they had met with the White House and they had met with Members of Congress and the press. They all wanted to be involved in some way in the space program.

Now, Captain McBride is there no more and is going to be leaving and that is another one of the chilling effect facets. How do you excite young people into public service as a noble career, when you are losing your role models who have been few anyway?

The scholarship program is another part of the Volcker Commission report. Maybe you would like to just comment on, how do you attract young people and does the scholarship program do it?

Dr. HINNERS. I believe there is merit to the scholarship program, but I fear that that alone is not going to increase the desire of people to go into public service. We have got to first get at the very basic attributes of our public service to make it attractive. The scholarship idea, with an indenture, sounds too much just like that. That we will bribe you into working for the government.

We should have a government where people, as they did in the 1960s, want to come. Where they are enthused that I can make a contribution to this country and I will do it voluntarily and I do not want you to necessarily pay my scholarship, but I want to go and be a part of good government.

Mrs. MORELLA. But they will not do it unless others look upon it as a noble profession. We heard the other day that when they recruited high schools and in colleges, who did they send? The IRS representative and the FBI. No problems with either of those agencies, I think they are very important. But they do not get the full scope of what public service is.

Also, they are living in an environment where Federal employee-bashing is still somewhat popular and the bureaucracy is looked down on. So you need to do some educating, do you not? You need to create that milieu where—they are just not going to grow up automatically feeling that way. Any comments?

Dr. HINNERS. Well, I agree with your observation and we, too in our recruiting—of course, we send out technical folks out as frequently as we can to the colleges, but we must start in the lower grades. The Civil Service, public service must take on the aura of an honorary profession right down in the lowest school grades. Again, to do that I think we have got to be sure that the people we have now will go out there and say yes, it is a good profession. Aspire to a career in the public service.

Mrs. MORELLA. I agree. Does anybody else have any comments? [No response]

Mrs. MORELLA. If not, thank you Mr. Chairman.

Mr. FORD. Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. I, first of all, want to thank you for holding this hearing and for this continuing series of hearings and, most of all, for the quality and character of the comments that you have brought, Mr. Chairman, to this discussion.

I would like to pursue a point that you made and I think it is absolutely accurate. It finds its core in the last question that Mrs. Morella asked. The question of whether, in fact, we could replicate the effort that was made in the late '50s and throughout the 1960s to put this country on the kind of footing that gave us the confidence to do all of the things that we have done since.

It may be true that we could not do it again. I do not believe that. I suspect that was a comment to raise the specter of the possibility that we might not. But if we do not, if we are not able to do it again, it will be for precisely the kinds of reasons that Mrs. Morella raised. That, in fact, that by the example that we are creating today, both in terms of the concrete symbols that we offer in compensation to the way in which we discuss Federal service day in and day out, that we will not replace those whom we are not attracting today and have not been attracting for some period of time.

My longstanding concern has been that in seeing the rapid erosion at the top of those who have been most dedicated for the longest period of time, we are seeing a culmination that has finally percolated up and that has been existent in the whole range of quality of recruitment that has been going on for a long period of time. There has been a long-term erosion in our capacity to attract and sustain in public service a range of people necessary to ultimately bring to top levels the very best of a generation.

I suppose that cynicism has always existed. I remember the stories during the early suborbital and orbital efforts and finally with the trips to the moon, that large numbers of people did not believe it actually happened. I suppose those numbers are gone today, but the cynicism is there and I am concerned that at a point into our future, there not only will not be those who are attracted, but there will not be a sufficient supply of those to attract.

That there will not be a sufficient number of knowledgeable citizens, who when it comes to making public decisions of the kind in which we have seen millions of people participate in call-in shows or letters to the editor over the last few months, that when they make those calls they are as knowledgeable as they need to be in what is at stake in the decisions that we make here.

I am not so much concerned about attracting people to positions like ours. I suppose there will always be those who seek that. But rather, that the kinds of positions that you occupy, or have occupied, and the way in which we reward those, has a very clear message at the very root of recruitment and that we will not be able to replace people, much less compensate them, in very short order. Enough said.

Mr. FORD. Thank you. I want to thank the panel again for your cooperation in the past. We look forward to continuing to work with you.

If you will recall, last year we were actually involved in negotiations with the Office of Personnel Management over an area pay scheme, and some skill-specific considerations in the pay schedule.

And I think it really sort of came apart when the President's pay commission seemed to be moving along so well.

It must have looked to people in the administration as though we did not have to talk about this anymore because the President was going to send up a recommendation that was going to be so dramatic that it was going to take care of the problem. People that I was talking to in the Office of Personnel Management got busy with other things. Now they are gone, and we have to get acquainted with new people over there.

We have not yet had the new director up here to get any feel about what this administration's direction might be in terms of pursuing the approach that we had been discussing with you and with the Defense Department representatives.

We had hoped to broaden that concept to other agencies that find themselves in similar circumstances. I am hopeful that we still can.

In any event, I hope that we can begin to develop the skeleton of some specific legislation that people can start screaming about and chewing on that will outline a number of these approaches and will run them up the flagpole and see if anybody salutes.

But we will have something pretty specific, I hope, to begin working on, using the Volcker recommendations as a starting point.

It does not have to happen overnight, but it has to be underway. I have had conversations with both Republicans and Democrats who in the other body we will be dealing with, and there is a strong willingness on their part to move forward.

Senator Glenn is every bit as concerned about this matter as anybody on this committee, and I think there will be cooperation between the two houses to move legislation.

I hope that we can move in tandem with administration initiatives as well. I still am optimistic. As one who did not vote for this President and did not campaign for him, I have watched very critically everything he said from the very beginning.

I cannot attribute to him one negative statement against federal employees or the federal establishment bashing that we heard from the two preceding Presidents, over and over.

Not once have I heard anything like that from this President. I think when we finally get his attention, we have somebody who is going to be willing to share the concern that has been expressed in this committee by you folks.

And if you have any way to indicate that to whoever it is that you have to get through to over there to get his ear.

Dr. **Fletcher**. Mr. Chairman, if I may interrupt, I think that between you and John Glenn on the Senate, you have been heroic in your efforts to try to resolve this question. And, in my last conversation with you you indicated that the White House has been a little bit laggard.

I have since taken action and written to the President and alerted him to the problem at NASA and in general, and I suspect with all the pressure that something will come out of this.

It had better happen soon, though, because we are hemorrhaging at NASA right now.

Mrs. **Morella**. Mr. Chairman, I also just recently again wrote to the President.

Mr. **Ford**. Thank you very much.

Next will be a panel with Mr. Richard Fogel, Assistant Comptroller General for General Government Programs; accompanied by Rosslyn Kleeman, Director, General Government Division, Federal Workforce Future Group, and Mr. Robert Shelton, Assistant Director, General Government Division, General Accounting Office.

You are all friends of this committee of long standing, people we have relied upon so many times. I expect you are going to give us a lot of answers this morning.

Without objection, the prepared testimony will be inserted in full at this point in the record.

Mr. Fogel, you and your panel may proceed any way you wish.

STATEMENT OF RICHARD L. FOGEL, ASSISTANT COMPTROLLER GENERAL FOR GENERAL GOVERNMENT PROGRAMS, ACCOMPANIED BY ROSSLYN KLEEMAN, DIRECTOR, GENERAL GOVERNMENT DIVISION, FEDERAL WORKFORCE FUTURE GROUP, AND ROBERT SHELTON, ASSISTANT DIRECTOR, GENERAL GOVERNMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. Fogel. Thank you, Mr. Chairman. We are pleased to be here today to present our views on the Volcker Commission report.

As you know, we at GAO have been concerned about the quality of public service for several years. As we said in our transition series report on the public service, the laws, regulations and processes of government are only as good as the people who have to carry them out.

If the quality of the federal work force is reduced, the quality of government programs is reduced. The bottom line in this situation is not less profit, but more importantly less effective government services, services that touch the lives of literally millions of people and, therefore, less respect for the government.

Top quality people in the federal work force effectively recruited, adequately paid, and continually developed is essential for the well-being of our nation.

Our federal work force deserves good working conditions and a performance management system that effectively rewards good performers.

We have continually advocated these positions in countless GAO reports and testimonies to the Congress over the years, and we have tried to implement these concepts at GAO. Unfortunately our message has not always been acted on.

I wish there had not been a need for a Volcker Commission, but there was. The commission represents some of the most eminent men and women in the country. Its report must be taken seriously and acted upon.

It does not paint a very positive picture of the state of public service, and it eloquently notes that continual erosion of the public service undermines the ability of government to respond effectively to the needs and aspirations of the American people.

The report provides an excellent framework of the changes needed to restore vitality and credibility to the public service, but its recommendations require specific action plans, and just as important, extensive, long-term commitment of political and career public service leaders to carry through on the changes. But we can afford no less.

The President, the Congress, and cabinet secretaries must exert leadership in revising the public service. Agencies such as OPM and OMB must take on more effective leadership roles and put development of the public service in the longer-term perspective.

Our work has shown that the government is not well postured to meet critical human resource problems, and we did not need a Volcker Commission to tell us that.

Agencies do not have effective work force planning efforts and good executive development programs, and unfortunately most leaders in the executive branch over the years have not paid sufficient attention to those issues.

OPM has not provided the leadership needed to focus more attention on these areas. OMB has too often not adequately recognized the adverse consequences of decisions dictated by short-term budget considerations on the long-term effectiveness of programs and the people who manage them. OPM needs to better address management problems within OPM itself.

The Volcker Commission recognized the need for effective leadership in all these areas. We at GAO intend to continue to follow up on the impetus for public service improvement the commission has initiated, and will be involved in issues directly related to several of the commission's goals and recommendations.

We stand ready to assist you and the other committees in examining any issues of particular interest. The attachment to my statement discusses our views on each of the commission's goals and recommendations. We agree with the thrust of almost all the recommendations.

We support the proposition that efficiencies in government operations should be realized wherever possible, but we do not believe essential changes in federal employment policies and practices can continue to be attempted on a budget-neutral basis.

The federal pay system has broken down and must be changed. Agencies across the board cannot continually absorb the cost of all pay and benefit increases and still carry out effective and efficient program operations.

Commissions have played an important part in our political process by defining problems or issues and presenting the outlines of possible solutions. Organizations such as the GAO can offer advice and recommendations for improvements, but the power to act resides with our elected officials, the Congress, and the President.

The course is not always clear, and the need for action not always appreciated. That, quite frankly, seems to be the case with the need for significant improvements in the public service situation. We do not believe there will ever be a ground swell of support from around the country for the actions recommended by the Volcker Commission, and support for its recommendations by elected officials probably will not win a lot of votes.

But the truth is that the vitality of government over the coming years and into the future is absolutely dependent upon meaningful responses to the overall conclusions and recommendations spelled out by the commission.

It is in everyone's best interest to have an effective, efficient government that serves the people well. The deterioration of the quality of that service and the people who provide it is not something that is easily noticed. It does not happen overnight, but it is happening as the commission and we at GAO have pointed out.

I believe every elected official has as part of his or her office a sort of fiduciary responsibility to leave things a little better than he or she found them. The condition of the public service is an area where people now in office have the chance to do that, but they must have the will to act.

The President has taken positive steps in that regard, and so has this committee. But statements of support just are not sufficient. Concrete actions on ethics, pay, recruiting, and the other relevant issues are needed.

The issues are clear and they have been debated and discussed at length. Action is needed, and we at GAO stand ready to help the committee in any way possible in terms of assisting and drafting legislation or doing more analyses, if you believe those are needed to help facilitate some decisions and action on these issues. That concludes my prepared statement.

[The attachment to the statement of Mr. Fogel follows:]

ANALYSIS OF COMMISSION GOALS AND RECOMMENDATIONS

Goal 1: Rebuild the Public's Trust

Recommendations:

1. Presidents, their chief lieutenants and Congress must articulate early and often the necessary and honorable role that public servants play in the democratic process, while at the same time making clear that they will demand the highest performance from those who hold the public trust.
2. Presidents must set the highest standards of ethical conduct for those who hold the public trust, and act quickly and firmly to remove those who violate that trust. Members of Congress and their staffs should be covered by similar standards. Codes of conduct to convey such standards should be simple and straightforward, and should focus on the affirmative values that must guide public servants in the exercise of their responsibilities.
3. The President and Congress should establish an independent advisory council, composed of members from the public and private sectors, to monitor the ongoing state of the career public service and make a bi-annual report to the President. In turn, the President should forward the report to Congress with his own comments and responses, including any recommendations for change that he may have.

We agree with the thrust of the recommendations. Government leaders must be supportive of a quality civil service and insist on the highest performance and ethical conduct. But, statements are not enough. They must be followed by actions. For 12 years in a row, federal employees have been given lesser pay increases than private sector workers received for comparable jobs. Freezes and cuts for social security recipients have been rejected because of a claimed contractual commitment, while the same freezes and cuts have been proposed for federal retirees. Words of support would ring very hollow if such contradictory actions continue to be taken. Similarly, if the highest ethics are set as a standard, violators must be dealt with. Ethical behavior by public servants has been the law of the land for years. Yet, we found that, of 114 cases in which 10 agencies' Inspectors General concluded that criminal violations of conflict-of-interest statutes had occurred during 1985 and 1986, the Department of Justice prosecuted 2 and agencies took administrative actions against 22. Here again, one sees that words don't necessarily translate into actions.

The recommendation for an independent advisory council to monitor and report to the President on the state of the career service is an intriguing idea. Such a group should not be needed since the Civil Service Reform Act of 1978 gave essentially this responsibility to the Office of Personnel Management (OPM). However, our reviews of OPM activities consistently confirm the Commission's view that OPM is not exercising the necessary leadership contemplated by the act. We recommended that Congress, through its oversight processes, should hold OPM accountable for meeting its Reform Act responsibilities.

Goal 2: Improve the Presidential Appointments Process

Recommendations:

1. The White House Office of Presidential Personnel should be given the resources and mandate to perform as an active recruiting agency for the President. To assist in this process, the President should direct the Office to develop qualification statements for all top positions, and make appointments based on those merits.
2. The financial disclosure process, while a key protection against conflicts of interest, should be streamlined to ease the burden on political appointees. The Commission encourages Congress to consider legislation to limit the tax penalties of divestiture for those who accept presidential appointments.
3. At the end of their service, presidential appointees should be granted up to three months of severance pay with full benefits as a bridge to outside employment.

How a President decides whom to appoint is a Presidential prerogative. However, we do believe the Commission makes some very cogent points that are worthy of serious consideration by the current and future Presidents. Certainly, the White House Office of Presidential Personnel should have enough resources to carry out its responsibilities and strive to see that presidential appointees are qualified for their jobs.

We see merit in the Commission's recommendation for a streamlined financial disclosure process and tax relief for presidential appointees who must divest financial holdings to avoid conflicts of interest. However, we are also aware that the President has submitted a legislative proposal to amend the ethics statutes based on the recommendations of his Ethics Commission. We have not had an opportunity to study the President's proposal and would prefer to defer comment on these matters until we have done so.

We are not convinced that the 3-month severance payment proposed by the Commission for presidential appointees when they leave office would serve a worthwhile purpose. Severance payments are not made to other federal employees who voluntarily decide to leave. The Commission suggested such payments would be a bridge to outside employment and discourage appointees from job-hunting during their last months in office. It is illegal (18 U.S.C. 208) for a presidential appointee or any other federal employee to participate in any matter that they know will affect the financial interest of an entity with whom they are negotiating for employment.

The Commission did not specify which appointees it believes should receive severance payments. If all presidential appointees in the 3,000 jobs the Commission referred to elsewhere in its report were to receive 3-months' pay and benefits upon leaving office, substantial amounts would be involved, particularly since their average tenure is 2 years or less.

Goal 3: Make More Room Near the Top for Career Executives

Recommendations:

1. The growth in recent years in the number of presidential appointees, whether those subject to Senate confirmation, noncareer senior executives, or personal and confidential assistants, should be curtailed. Although a reduction in the total number of presidential appointees must be based on a position-by-position assessment, the Commission is confident that a substantial cut is possible, and believes that a cut from the current 3,000 to no more than 2,000 is a reasonable target.

2. The President should more frequently consider career officials for sub-cabinet appointments, taking advantage of a prime source of professionalism and experience to his or her Administration.

3. The President and Congress should set a lower limit on the number of noncareer senior executives allowed within a particular department or agency. Current law permits up to 25 percent of an agency's senior executives to be noncareer appointees, thereby crowding out opportunities for career officers.

The Commission believes there are too many presidential appointees and suggested that their number be cut from 3,000 to no more than 2,000. While we would not wish to speculate on how many appointees are enough, we do know that their proportion to other employee groups has increased significantly in recent years. From 1980 to 1986, civilian employment in the Executive Branch increased 0.7 percent. Over the same period, career

Senior Executive Service (SES) members decreased by 5.3 percent while noncareer SES members and Schedule C appointees increased by 13.1 percent and 12.8 percent, respectively.

We agree that the appointment of career executives to top-level jobs is a good idea. However, we have no information on how often such appointments happen now, so we don't know how much of a change the Commission's recommendation would make.

Under current law, noncareer appointees cannot hold more than 10 percent of all allocated SES positions governmentwide. The limit is 25 percent in any one department or agency. Since the Commission did not specify what it thought the lower limit on individual departments and agencies should be, it is difficult to assess the merits of the third recommendation. It should be kept in mind that the objective of the 25 percent limit was to accommodate smaller organizations, with few SES positions allocated. For example, in 1987, the Department of Education was allocated 84 SES positions of which 19, or 22.6 percent, were filled by noncareerists. On the other hand, the Department of Health and Human Services was allocated 583 SES positions of which 57, or 9.8 percent, were filled by noncareerists. If the governmentwide limit of 10 percent were applied to each department, HHS could still keep its 57, but Education would be limited to 8, or 11 fewer than the 19 it had and 13 fewer than the 21 it was allowed under the 25 percent limit. Thus, reducing the 25 percent limit to 10 percent would not greatly affect the overall number of noncareer SES members in the government but would have a major effect in certain small agencies at or near the 25 percent limit.

The Commission's objective of reducing the number of political appointees in the SES could also be accomplished if the base for calculating the 10 percent and 25 percent limitations was changed to apply to filled positions. The law provides that the percentages are to be applied to allocated positions. Because some allocated SES positions may be vacant or the agency has no intent to fill them, noncareer SES members can represent greater percentages of the positions actually filled. At Education, 23 SES positions were not filled, and its 19 noncareer SES members were 31.1 percent of all filled positions. The 57 noncareer SES members at HHS were 10.7 percent of all filled positions.

Goal 4: Decentralize Government Management

Recommendations:

1. Provided they receive appropriate program guidance from the President and oversight from Congress, cabinet officers and agency heads should be given greater flexibility to

administer their organizations, including greater freedom to hire and fire personnel.

2. In decentralizing administrative authority and flexibility, the President and Congress must ensure that senior managers receive the executive training to exercise their responsibilities effectively.

The Commission provided little specific information in making its two recommendations in this area. It believes cabinet officers and agency heads should be given greater flexibility to administer their organizations, which we agree is a worthwhile objective.

Agencies have expressed concerns about the lengthy processes involved in bringing employees into the government and in terminating employees whose conduct or job performance do not meet established standards. We agree with the Commission that the hiring and firing processes need to be examined and possibly simplified.

The Commission's call for the assurance that senior managers receive executive training commensurate with their responsibilities is valid. Our work has shown that executive training is uneven across agencies, and more attention needs to be paid to this issue.

Goal 5: Strengthen the Presidential/Career Partnership

Recommendations:

1. All presidential appointees must receive adequate orientation to office. Such orientation should be provided during the hiatus between nomination and confirmation, focusing on the substantive policy and administrative responsibilities each appointee faces, the ethical conduct expected of a public official, and the positive role that career officers can play.
2. Cabinet secretaries and agency heads should be given greater opportunity to participate in the choice of their sub-cabinet officers, particularly where the Office of Presidential Personnel and a cabinet secretary disagree on a specific appointee.

We believe the Commission's recommendations could lead to a more effective working relationship between presidential appointees and career personnel. Appointees new to the government need to be familiar with the organizational structure in which they will be working, the government's ethics and other personnel rules, what career employees do, and a myriad of other issues a person new to the government will encounter. We agree with the Commission that required orientation sessions for new presidential appointees is the best way to assure this is accomplished.

It also appears sensible to us that cabinet secretaries and agency heads should have the primary responsibility for selecting their own sub-cabinet officers, as the Commission suggests.

Goal 6: Rebuild Student Interest

Recommendations:

1. The nation must elevate the importance of civic education as a part of social studies and history in the nation's primary and secondary school curricula.

2. America's communities should increase the opportunity for young people to practice their citizenship skills. The Commission urges local businesses, nonprofit organizations, civic groups, and governments to work together in sponsoring more of the citizenship activities that students deserve.

3. America should take advantage of the natural idealism of young people by expanding and encouraging national volunteer service, whether through existing programs like ACTION, the Peace Corps, and VISTA, or experiments with initiatives like President Bush's Youth Engaged in Service (YES) and some of the ideas contained in the Democratic Leadership Council's citizen corps proposal.

The Commission's recommendations to achieve this goal are based on its beliefs that the citizenry needs to be more informed about the American political system and that the Nation's young people need to develop a stronger sense of civic duty. The Commission believes attention to these issues by educators, businesses, communities, and government leaders will help in attracting students into public careers.

We agree with the Commission. Its analysis of student attitudes toward federal employment showed an alarming lack of awareness of what a government job entails or the exciting challenges its presents. Along with measures critically needed to make government employment more attractive to prospective employees, a greater appreciation of the important role the government plays in the Nation's affairs can only lead to a brighter future for our democracy and the institutions that govern it.

Goal 7: Recruit the Very Best Graduates

Recommendations:

1. The President and Congress should establish a Presidential Public Service Scholarship Program targeted to 1,000 college or college-bound students each year.
2. The President and Congress should expand and strengthen the government's current programs for recruiting college graduates into public careers. Specifically, the Presidential Management Internship Program should be expanded from 400 positions per year to 1,000.

Like the Commission, we believe the very best graduates are needed in the government. We cannot agree with those who suggest that the government can get by with mediocrity or that employees with average ability are good enough for government work. Unfortunately, evidence is mounting that top graduates are not coming to government now.

The Commission's recommendations to establish a Presidential Public Service Scholarship Program for 1,000 college students each year and to expand the Presidential Management Internship program to 1,000 positions a year would undoubtedly help in attracting more qualified graduates and are deserving of serious consideration. However, it should be kept in mind that these two programs, if the Commission's recommendations are adopted, would account for a very small proportion of the many thousands of graduates the government hires each year and would be only a small step toward achieving the overall quality the government needs. Moreover, a Commission survey of Presidential Management Interns disclosed considerable disenchantment among the Interns with their government experiences and prospects. If the very best graduates are recruited, they must be given opportunities and challenges commensurate with their abilities.

Goal 8: Open New Channels of Communication

Recommendations:

1. The government's executives, both senior and mid-level, political and career, should serve as ambassadors of the public service on America's college campuses.
2. To describe and celebrate public careers, government should open new channels of communication with America's college students--at job fairs, and through electronic bulletin boards, computer software, and/or video cassettes.

3. The OPM should establish a unified federal job bank to help students find openings in the public sector, accessible for student "browsing" through 800-line personal computer hookups.

The Commission has some very good ideas on how to enhance campus recruiting. If students don't know what federal agencies do, what jobs are available, or how to go about applying for openings, the prospects of attracting talented individuals to public service careers are quite limited. We agree with the Commission that OPM and the agencies must be more pro-active in seeking out potential employees rather than waiting for employees to come to them in response to vacancy announcements.

The Commission saw fit to mention GAO as one of the agencies it believes do well in getting their messages out to college campuses. We at GAO take our recruiting very seriously and are already doing several of the things the Commission suggested. GAO's recruitment is led by our senior executives, and they are expected to personally get to know the deans, placement officials, and the department heads of the schools in which we recruit. The competitive climate is just too great to allow us to be passive about recruiting and expect good people to come to us. We are convinced this top-level commitment to recruiting has helped us to bring in the quality of employees we are getting.

We think the 800 number job bank proposed by the Commission would help. The need is evident from the Commission's finding that only 30 percent of top college graduates say they would know how to find a federal job if they wanted one. The survey of Presidential Management Interns also showed they experienced difficulties in getting information they needed about federal employment.

Goal 9: Simplify the Recruiting Process

Recommendations:

1. The OPM should continue to deregulate the hiring process by giving departments and agencies broad, but conditional, authority to set their own rules, as well as through aggressive use and expansion of existing authority to experiment, and continue use of advisory and clearing-house mechanisms to share information across government.
2. The OPM should experiment with a variety of new recruitment incentives for hard-to-recruit professions--for example, more flexible compensation systems that address the costs of starting a new job.
3. The OPM should continue its experiments with on-the-spot hiring of both undergraduate and graduate students to minimize paperwork and delay.

The recommendations to achieve this goal are designed to give agencies greater flexibility in hiring employees, including experimentation with new recruiting incentives and procedures to speed up the hiring process.

We have generally endorsed the proposition that agencies know best what recruitment and other personnel practices fit their needs. The Civil Service Reform Act allows OPM to delegate personnel management authorities to the agencies as it deems appropriate. Thus, the Commission's recommendations are consistent with the Reform Act's objectives. We caution, however, that OPM's record in recent years of evaluating agency personnel operations, including their use of delegated authorities, has been spotty. If agencies are to have greater freedom in their hiring programs and allowed to offer special recruitment incentives to certain employee groups, effective OPM oversight is crucial to assure that merit principles are followed.

We agree with the Commission's recommendation that OPM continue its alternative hiring experiments, including on-the-spot offers to outstanding graduates. These efforts are in their early stages, and we will be monitoring them to see how they work out in actual practice.

Goal 10: Increase the Representations of Minorities

Recommendations:

1. America's educators and community leaders must help more minority students stay in school through high school and

college to help build the talent pool. The Commission recommends that government provide needed training, including high school course work, for blacks and Hispanics upon entry into their government careers.

2. America's graduate schools of public affairs should reach across traditional academic boundaries to interest minority students in public life through cooperative relationships with historically black and Hispanic colleges and universities.

The Commission's objective here was to better prepare members of minority groups for public service careers.

As the Commission pointed out, minority groups are becoming a large portion of the Nation's workforce. However, their low graduation rates from high school and college suggest that many of them will not have the skills government jobs require. We agree with the Commission that special efforts are needed to rectify the situation not only to enlarge the potential workforce for which the government and other employers will be competing in the future, but also to improve the employment prospects for minorities in this country.

Adoption of the Commission's recommendation that the government provide needed training, including high school course work, for minorities entering government careers would represent a significant, and costly, change in federal employment practices. If such an effort is undertaken, we suggest it be recognized as a training program, perhaps along the lines of a co-op arrangement, for the long-term development of potential employees separate from the employment of individuals prepared from the outset to do the government's work.

Goal 11: Provide Competitive Pay and Demand Competitive Performance

Recommendations:

1. The Commission recommends action to raise executive, judicial, and legislative salaries to 1969 levels of purchasing power.
2. It recommends further that the needed restoration of purchasing power in senior salaries be extended more evenly over time; e.g., 25 percent now and the balance by the beginning of a new Congress in 1991.
3. To build public support for such an increase, the Commission recommends that Congress adopt a clearly enforceable ban on speaking honoraria and other income related to their public responsibilities.
4. Once purchasing power is restored to 1969 levels, the Commission recommends development of a process that will trigger needed increases in a more timely fashion.
5. If Congress is still unable to act on its own salaries, the Commission recommends that the President make separate recommendations for judges and top-level senior executives along the lines proposed and that the Congress act promptly upon these recommendations.
6. If for some reason there is delay in implementing salary increases at the political level, the Commission recommends prompt action by the President and Congress to raise the cap on the Senior Executive Service, even if this means that their pay in some instances could exceed that being received by the political appointees above them.

7. The President and Congress must give a higher budget priority to civil service pay. The Commission recommends a new pay-setting system that recognizes the fact that public employees live and work in localities characterized by widely different living costs and labor market pressures, and adjusts compensation upward accordingly.

8. The Commission is of the view that these changes, including a substantial and prompt narrowing of the gap between public and private pay on a locality-by-locality basis, will create the opportunity for higher performance and productivity within the civil service. Thus, while urging that civil service pay be given a higher budget priority, the Commission believes that a substantial portion of the costs can and should be absorbed through existing personnel accounts, whether through targeted reductions in employment or the elimination of programs that no longer serve essential public need.

9. The Commission encourages the President and Congress to use their respective budget and oversight authorities to monitor closely progress toward improving standards of employee performance, while eliminating duplication of services and unnecessary layers of government through restructuring both within and across departments and agencies.

The Commission's basic premise here is that established federal pay adjustment processes have not worked, leaving federal salary levels far behind those paid in the private sector.

The inadequacies of pay rates for Members of Congress, judges, and top executives were clearly demonstrated by the report of the 1989 Commission on Executive, Legislative, and Judicial Salaries. Our work over the years has also shown that top-level pay rates are too low and have contributed to recruitment and retention difficulties for senior government positions. Similarly, the government's own surveys, which our reviews have found to be sound, of private sector salary rates for jobs comparable to General Schedule positions show an average pay gap of about 22 percent. The gap is the cumulative result of 12 consecutive years of smaller pay increases for federal employees than the average increase in private sector salaries each year. Federal blue-collar employees' pay increases have also been limited for several years to less than their private sector counterparts received.

We agree with the Commission that this situation cannot be allowed to continue. Reasonable pay rates at all levels of federal employment are needed to provide basic equity to the government's workers and must be achieved if the government is to be able to attract and keep a quality workforce in the future.

For top level officials, the Commission presents a series of alternatives for increasing pay. We believe its call for incremental pay increases is reasonable and will be more acceptable to the taxpayers and other government employees than a large immediate increase, such as was defeated by Congress in February 1989. The Commission also recognizes that large increases would not be necessary if more regular adjustments were made and called for a process to be developed that would trigger needed increases in a more timely fashion. We agree with the Commission, but would also point out that such a mechanism has existed in law since 1975 whereby top officials are to receive each year the average percentage increase in General Schedule salaries. This mechanism has not been effective because Congress, more often than not, disapproved the increases. Thus, any mechanism for regular adjustments will be successful only to the extent it is allowed to operate.

Like the Commission, we too, have recommended that congressional pay setting be "de-coupled" from executive and judicial pay. We cannot agree, however, with the Commission's recommendation that SES pay rates be increased even if Executive Schedule pay rates for top-level political appointees are not increased. We believe it is important that pay differentials between levels of responsibility be maintained and, accordingly, would urge that Executive Schedule and SES pay rates be adjusted together.

The Commission also recommended that General Schedule pay rates be established and adjusted on a locality basis in contrast to the national pay scale that now exists. We believe the locality pay concept may have merit and have recommended in the past that it be considered. We recognize, however, that the implementation of locality pay for white-collar workers would not be an easy task and considerably more information is needed about its desirability and how it could be designed than is now available. We are presently considering how best to examine this issue.

We do not agree with the Commission's assertion that much of the cost of achieving adequate pay rates for federal employees can be absorbed through existing personnel accounts. The Commission suggested that savings are available through targeted reductions in employment and the elimination of programs that no longer serve essential public needs. It gave no specifics of where these potential reductions might be. If employment levels are too high or programs are not needed, corrective actions should be taken regardless of whether employee pay is to be increased. We do not believe essential changes in federal employment policies and practices can continue to be attempted across-the-board on a "budget neutral" basis.

Goal 12: Strengthen the Government's Personnel Agency

Recommendations:

1. The President should highlight the important role of the OPM by sustained contact with its Director and by ensuring participation by the Director in cabinet-level discussions on human resource management issues. The Commission further recommends that OPM's current operating responsibilities--e.g., specialized training, approval of routine personnel

decisions--should be decentralized to the federal departments and agencies.

2. The number of politically appointed managers inside OPM should be significantly reduced.

The Commission believes OPM should have a stronger influence with the President on human resource management issues and should emphasize its policy setting role, delegating operating responsibilities to the agencies.

We agree. Our OPM management review concluded that OPM has not exerted its leadership responsibilities in planning for workforce needs, assisting with performance management problems, and general oversight of personnel operations in the agencies. A stronger relationship between the President and the OPM Director could bring some of these shortcomings to the fore, allow OPM to be an advocate for the civil service in top level policy deliberations, and make personnel management issues more visible in Presidential decision making. Similarly, to the extent that OPM can divest itself of operating responsibilities, with appropriate oversight, to the agencies, it can concentrate on the many other issues discussed in the Commission's report and thereby be of even more service to the President.

Exactly what OPM responsibilities could reasonably be delegated to other agencies would have to be the subject of much further study. For example, the Commission mentioned specialized training as an OPM function that would be more appropriate for individual agencies. To our knowledge, individual agencies already are responsible for providing specialized training to their employees, and OPM training covers matters of a more general nature.

We believe the Commission is right in recommending that the number of political appointees at OPM be reduced. It seems to us that, to the extent possible, day-to-day management of the federal personnel system should be kept out of politics.

Goal 13: Increase Government Productivity

Recommendations:

1. In conjunction with the pay increases recommended above, the number of senior executives currently eligible for annual bonuses should be reduced by half to ensure that performance bonuses are only used as bonuses, not as hidden salary increases, and to concentrate scarce budget resources on the highest performers.
2. The OPM must take a stronger leadership role in providing assistance to departments and agencies on performance appraisal and productivity improvement.
3. The OPM should continue past experiments with "gain-sharing" in agencies.

The Commission's recommendations to achieve this goal reflect its view that agencies need to do a better job of rewarding good performance, and thereby enhance productivity improvement.

One of the more controversial recommendations is the proposal that the number of senior executives eligible for annual bonuses be cut in half so that the bonuses would be used to reward the highest performers. This recommendation is consistent with the Civil Service Reform Act's objective for the bonus program of recognizing and rewarding performance. However, if SES bonuses are being used as hidden pay increases rather than performance awards, as the Commission apparently suspects may be happening, it is not evident how a reduction in the number of SES members eligible for bonuses would halt that practice. Also, the recommendation was contingent on the premise that the Commission's proposals for substantial pay raises for SES members and other senior officials would be adopted. If such pay raises are granted, they should help deter any inclination by agency managers to use bonuses for purposes other than performance awards.

Currently, up to 3 percent of an agency's SES payroll can be used for bonuses with no limitation on the number who can receive them. We believe this arrangement is appropriate and see no reason to impose an arbitrary limit on the number of bonus recipients.

We agree with the Commission's recommendation that OPM give more assistance to agencies on performance appraisal and productivity improvement. We, too, have recommended that OPM assist agencies in improving their productivity and quality of work and give more attention to problems that are preventing performance management systems from achieving their full potential. Our work has shown that agencies are experiencing significant problems in establishing and using meaningful performance standards that are the heart of performance appraisal systems. OPM's own reviews have disclosed similar problems.

We are unaware of any OPM plans to stop its experiments with "gain sharing" in the agencies that the Commission recommended be continued.

Goal 14: Provide for Training to Succeed

Recommendations:

1. The OPM and the nation's schools of public affairs should work together to define the skills needed by today's public executives. In addition, to recognize the importance of management as a distinctive skill, the President should create a separate track within the Senior Executive Service for generalist managers.

2. The OPM should help departments and agencies design clear career paths for advancement to senior executive positions, and provide guidance on the kinds of executive development curricula and succession planning appropriate to future success.

3. As part of the overall decentralization of responsibility recommended by the Commission, OPM should encourage departments and agencies to develop their own programs, to contract with other comparable agencies, or to look outside government for the training needed for their specialized missions.

4. Schools of public affairs should enrich their teaching through a greater appreciation of the role of practical experience. Toward this end, the National Association of Schools of Public Affairs and Administration and its representatives should work toward the establishment of a Public Service Fellows Program, modelled on the prestigious White House, Congressional, and Judicial Fellows programs, designed to bring teachers of public affairs into government for a year of hands-on experience at the federal and state levels.

With one exception, we agree with the Commission's recommendations for achieving this goal. Training is critically important in equipping new employees to understand and carry out their job responsibilities and for keeping employees up-to-date with changing requirements and technologies as their careers progress. Unfortunately, training often is among the first programs cut when agencies seek ways to reduce overall expenditures. The Commission is on sound ground when it calls for greater attention to the federal training program, particularly as it pertains to the development of employees for future executive positions.

We disagree with the Commission's proposal for a separate track within the Senior Executive Service for generalist managers. Management is the essential function of the SES, and managerial skills are needed for virtually all SES members. In fact, the SES was conceived as a cadre of managers who could be assigned across government as needed. We believe it is more appropriate to assure that appointees to SES positions have demonstrated managerial competence than to change the SES concept as the Commission's proposal seems to suggest.

The need for improved preparation for executive positions, as many of the recommendations are intended to accomplish, is real. The Civil Service Reform Act provided for the establishment of the SES Candidate Development Program to assure that prospective appointees to SES positions have the requisite managerial skills. If candidates successfully complete the program, they are certified by OPM as being managerially competent. Our work has shown that most new appointments to SES positions are made to individuals who may possess the technical skills desired but did not participate in the Candidate Development Program. Thus, agencies have no assurance that their SES appointees will be capable managers.

At GAO, our policy is that the SES Candidate Development Program will be the main source of our SES appointees. We have found the program to be an effective means for preparing promising employees for executive positions.

Goal 15: Improve the Government Work Place

The Commission made no recommendations on how the working conditions of federal employees should be improved. It did observe, however, that changes in working conditions could be as important for recruitment and retention as a challenging job and decent pay. We agree and are making significant investments at GAO in improving and modernizing our facilities. Improvements in office space, avoidance of sexual harassment, elimination of red tape, whistleblower protection, and more flexible working hours and locations, all mentioned by the Commission as working condition issues deserving attention, could make government work more rewarding both to employees and the public they serve.

Mr. **Ford**. Thank you.

We have talked about the quiet crisis of employment throughout the government for a long time. Unfortunately most of what we talk about has to be backed up by anecdotal evidence. We don't have very much in the way of comprehensive studies that will measure or even illustrate the depth of the problem. Is there a standard government-wide definition, for example, that we could apply to determine how many vacancies exist in the government at the present time?

Mr. **Fogel**. Not that we are aware of, Mr. Chairman. As you know, we have been doing some work with you trying to find out the extent to which there is a standard definition, and what we find is that the agencies and OPM do collect data on vacancies, but when we went to ask them the number of positions that were vacant, what we found is that some very hard to fill positions have been vacant so long, they do not keep them vacant anymore. They just give up trying to hire people.

So, we do not have good standard definition to get an overall picture of the extent of the problem.

Mr. **Ford**. What would be your view of the best way to define a vacancy, and have any of the agencies that you have been in contact with undertaken any kind of a program to get a handle on the magnitude of the vacancy problem within their agency?

Mr. **Fogel**. Well, I think some are beginning to. We have had discussions with several agencies in the course of trying to come up with this information, and I think you have to go beyond just looking at the number of positions that were vacant for a specific number of days and get into the situation where you ask the agencies what all of their critical needs may be and then decide how they want to define it.

For example, HHS officials—and I know officials from HHS are coming up to testify this afternoon—have cited instances to us where they basically gave up recruiting for positions because they could not fill them and subsequently do not include them in a count of what is vacant now.

NASA did the same thing. They had several unsuccessful attempts to try to recruit people for some key scientific positions and then they just decided to not call them currently vacant because they cannot fill them. And so, I think we would be willing to work with you on a broader definition of what that would be.

Mr. **Ford**. I think it would be of particular interest in developing this picture if the kind of vacancy you were just describing could be identified throughout the agencies where literally there is an identified set of skills needed for the mission of that agency.

They construct the job description and the specifications for the person to fill the position, then nobody will take the job.

It might be because you are looking for deep sea divers and that is dangerous. However, it sounds to me like it may frequently be that colleges and universities are paying more for that talent in a more hospitable environment than one would get moving to a high-cost area like Washington and having to deal with a compressed pay situation.

Mr. **Fogel**. Well, that is correct. We certainly have other specific examples of that type of problem. For example, in October 1987, we reported as far as EPA was concerned in the Superfund program that high employee turnover, inadequate pay and insufficient training had delayed or hindered the quality of Superfund activities. EPA was trying to recruit attorneys, chemists, and engineers—three critical positions—and they found that the government was trailing the private sector by anywhere from 25 to 68 percent in terms of the salaries they could offer these people. They could not hire them.

Now, that directly affects the quality of EPA's effort to control the Superfund program. I am sure that there are many more examples like that that have already been reported on.

Mr. FORD. Would you consider it a fair assessment that by tradition we are still trying to operate a government-wide pay system that probably was last relevant around the turn of the century? If you look just at the specifics in the Volcker report, and the areas of expertise of witnesses who will be coming to testify, you find a lot of these skills and disciplines were unheard of in government service 30 years or 50 years ago. Yet, the system for recruiting and paying these people is the same as it was before we had rocket scientists, for example, working for the federal government. Years ago we might have had a couple of people buried someplace in the defense establishment who had these unique skills and knowledge. Now we have a whole agency utilizing these specialists that has been in existence for 30 years. Yet we are still trying to recruit and compensate people in an entire new function of the government—space exploration, with all that that entails—on a pay system that is basically the same pay system on which we ran the Post Office 50 years ago.

Is that a fair assessment of where we are?

Mr. FOGEL. I think it is generally accurate. I would say there has been some improvement. There is obviously more flexibility that now exists, but essentially I think the government's entire system is antiquated and means that we cannot effectively compete in the marketplace for top quality people.

And I do not think that anyone intends that the government should be able to get all of the top quality people, but you need quality people if you want to have effective government.

And our entire pay and classification structure today needs to be updated, or we are going to continue, as Dr. Fletcher said, to be more and more troubled.

What frustrates us, as I am sure it does you, is every private sector person that I talk to that runs any type of organization always is concerned initially about the quality of the people that he or she has in that organization, always says that the quality of people is a key to any successful organization and operation. If you do not have quality people, you cannot do a lot of things.

That is the position we absolutely subscribe to at the GAO. Yet that view never translates into effective support by many people for assuring that we get quality people into the government. So I think that we do need to look at the whole system and try to change it.

And the Volcker Commission's recommendations are a very appropriate way to begin.

Mr. **Ford**. We have people that convey their concern to us from these agencies. For example, the FBI says they cannot get a field agent to take a promotion to a special agent in charge in a major city because it means moving to a higher cost area, under a pay cap which prevents them from providing any more compensation for taking the additional responsibility. This constraint has changed the nature of that agency.

Back when I was in law school and had friends considering the FBI as a part of their career, it was generally assumed that if you could make it to being a special agent in charge in a major city and then retire from the FBI, you would have considered your career a success.

They tell me now they cannot get somebody to move from Indiana to Detroit or from Ohio to New York. I believe that they are trying some method in New York City, for example, of 25 percent bonus plan.

But it is not just agencies like that. The Postmaster General has been trying to fill the position of Postmaster for New York for quite a while.

We told the Post Office in 1970 we did not want them to be a bunch of political hacks anymore. We told them to be professional, and instead of having political appointees in management positions, to train and promote qualified people from within.

Now, we find that because we left them linked—by and large—to the federal government pay system, and we have been affecting them with all these budget changes every year, that they are having the same trouble.

The U.S. Postal Service is supposed to be an agency that does not have political hacks. It has career people. But, their career people will not take promotions because they cannot get the pay increases. We have the same story; agency after agency.

Would it be at all practical for us to try and measure the impact this is having on the mission of various agencies or would they be reluctant to have such a measurement developed? Perhaps they don't want someone to take advangtage of the situation or say, for example, this is a good time to cheat on your taxes because there is nobody in charge at IRS, the top five jobs over there are empty. [Laughter.]

Mr. **Fogel**. It is our understanding that they are trying to get them filled and hopefully it is not just the top five people over there who are going to make sure that people report their taxes properly. We could certainly try and work with you to develop some strategies to try and measure that.

I am not sure that in the long term we could get more than some good anecdotal information, but there probably could be a way to talk and get some data from key agencies that gets at the issue of the extent to which people are willing to move for promotions. We have the same difficulty in the GAO of getting people to want to transfer from some of our regional offices into Washington for the exact reason that the former witnesses were talking about from NASA.

It's very difficult to buy a house here, even if you get a promotion. It may be, in fact, possible to look at the agencies to see whether there is some data that could be developed on that and we would certainly be willing to do that.

Mr. FORD. Well, central to the Volcker recommendations is development of a locality pay system, and skills differentials. In other words, we may have to establish job standards for specialists, such as a contract lawyer for the Navy Bureau of Ships, and an environmental lawyer for the EPA.

I have a son who was practicing law here. Much to my surprise he went back to school, and got a Master's in environmental law. I thought he was wasting a lot of time. He told me, "Dad, you are old-fashioned. There are not very many of us around with a Master's in environmental law. I am a hot ticket now." Indeed, it seems to have worked out for him.

We did not know what environmental law was when I went to law school, or when I was practicing before I came to Congress. It is a whole new field. We do not seem to have the capacity to say to an agency like EPA, we recognize that you are going to have to be going out there into a very small pool of available talent to get people and therefore we may have to pay lawyers to work for you or for other agencies that have a specialized need a little bit more than the generalist trial lawyer over at the Justice Department.

My experience here tells me that the people who would be left out of this new system will be screaming their heads off that it is unfair. So, it is going to be difficult.

Historically the major Federal employee unions have resisted even discussing such a system. It has been their adamant position that a clerk is a clerk, no matter where they are, and they all should be paid the same.

In the last few years union leaders seem willing at least to discuss the idea of locality pay. I do not know yet how far they are willing to discuss, because there is still a built-in intransigency for many reasons. It is going to be hard to overcome.

Nation-wide pay is the way we have always conducted the government pay system, so it is firmly imbedded in the system. As they say, "to make an omelet you have to break some eggs," it is going to be hard to break the first eggs, so to speak, to get either area or special skill pay.

Mr. FOGEL. I just do not know how much longer we can afford to rely upon approaches and systems that may have been good in another decade but really do not seem to be adequate to deal with the problem today.

We are very concerned in the GAO that the Government not take an even more piecemeal approach to pay. There has to be a comprehensive look at it. That is one of the reasons we are opposed to the President's proposal just to give pay raises to judges. We do not think that is the way it ought to go. We think there ought to be an across-the-board pay increase for all the branches of government.

On top of that, though, you do have to look at the issue of locality pay and that is not just for the senior people, that is for all the levels. I think there is no doubt that a clerk's function in, let us say an IRS service center in Kansas City, is going to be the same function that that person would perform if he or she were in Philadelphia or Brookhaven, but no major corporation that I know does not take into account, too, the locality that they are in and cost of living. If we want to attract people, we are going to have to do that.

We cannot afford, for example, in the IRS, to continue to have to recruit people and pay them less than people can make at a fast-food store or a restaurant, to come in and try to process our tax returns. What it is going to do is continue to reduce the quality of the service IRS can give the taxpayers. So if there has to be some locality pay factored in there, we think that is going to have to be done eventually.

Mr. FORD. Mrs. Morella.

Mrs. MORELLA. Thank you very much, Mr. Chairman. I am going to have to leave. I just wanted to congratulate all of you for this wonderful report, which analyzes the various recommendations with your kind of responses.

There was one recommendation that caught my eye especially and that had to do with whether we should continue with a committee of some sort. The Volcker Commission report suggested the tripartite committee that would be bipartisan, that would be ongoing to look at public service and that would report to the President and to Congress about every two years.

You seem to pick up on that and you say, I think something like OPM has that responsibility and that they should be perhaps shaken up to do something about it. I'm just curious about whether you would comment on that, because one of my recommendations was going to be that we set something up.

Mr. FOGEL. Well, we thought that the Civil Service Reform Act provided a good structure for the various agencies we have in government, be it OPM, or the President, or Congressional Committees, but it is clear to us from the past decade of looking at OPM, that they have not really picked up the ball the way they should.

Now, we are encouraged in discussions we have had with some of the new people that there seems to be a change in attitude, more positive. On the other hand, we are not opposed to the idea of some type of outside group being created to continually come back to report to the Congress and the President on the quality of public service and what is happening.

I think what concerns us very much at the GAO is that no one should walk away from this issue with a feeling of satisfaction if all the Congress and the President do is create another commission, because you do not need another commission at this point in time.

If the facts can be gathered and through the efforts of this Committee and perhaps some very strong leadership from the President you can get some action, I think it would be appropriate to have a commission come back and say what has happened to improve things in a couple of years, as a result of changes.

But there are a lot of analysts, including Roz and Bob and other people at GAO, who could probably write the next commission's report next week, if nothing happens. But we are not opposed to the idea of having some outside body continually report, because I guess we do not feel the executive branch has done what it could have done, if it had been exercising its leadership role properly.

Mrs. MORELLA. Well, there is no doubt that maybe we could get OPM to fulfill that kind of responsibility and GAO look in on it too, but it seems to me that it does give it an aura of impartiality if you get other people who are in the public sector. We can be too involved, I suppose, to see the total picture to do that. So I am pleased that you see that there is a possibility of doing that.

Also, you talk about examining the hiring and the firing processes anyway, and the fact that I think you said you could tighten up the allocation requirement for the career-appointed offices. Would you explain that a little bit?

Mr. **Fogel**. Are you talking about political versus career?

Mrs. **Morella**. Yes. Political versus career appointments.

Mr. **Fogel**. It is our understanding that this is one of the issues in the Volcker report that is somewhat in contention with some of the people in the Administration and perhaps in the Congress.

We have not been able, in our own work, to arrive at any specific basis for saying what the exact number of political appointees should be and we do not intend to. We think the basic guidance in the Civil Service Reform Act in terms of the total number of noncareer, SES positions that can be appointed and the way the Presidential confirmation process works is fine.

But what really concerns us is the ability of the Executive Branch agencies to effectively manage their operations and time and again we have discovered in our reports and in the general management reviews we have done of, oh, probably 10 to 12 agencies up to this point in time, that insufficient attention is paid to program implementation.

Too much time is spent talking about policy development and very little time is spent thinking about how the policy is going to be implemented. As a result, you do not have good management. You do not have a good way to clearly define what the objectives are, figure out how you want to hold people accountable, get good programmatic or financial information on what is happening.

One of the reasons that a problem occurs is there is so much turnover among the people running the programs, because they are political appointees. We are very concerned about how much longer the agencies can afford to continue to operate this way. We ask the question somewhat rhetorically, because you cannot have your top program people turning over every 18 months, two years, two and a half years. It is a classic reason why we do not think agencies have done enough in basic work force planning and executive development, because the political people keep turning over so much.

Mrs. **Morella**. And it is demoralizing to the career people.

Mr. **Fogel**. Well, I think so. But we have seen some very positive operations. For example, I would like to point to Bill Brock when he was at Labor as Secretary. He did a very good job of relating the political people to the career people and bringing the career people into the process in terms of having them be involved in the decisions. It was very clear that the political people were making the decisions, but the career people were involved.

But generally speaking, we find that the career people do get somewhat distressed, because they do not—as the Volcker Commission pointed out—have the opportunities to advance as much. But even more importantly than that, it is just not a good way to run an organization.

You had at the Social Security Commission nine Commissioners in a period of 10 years. Now, how can any organization be expected to operate effectively when you have nine people running that agency in a period of 10 years? I do not care how good they are, it is a very difficult situation to have to deal with.

So I think that is one of the things, as you look at the Volcker recommendations and discuss the issue of political appointees, that needs to be considered.

Mrs. **Morella**. Regarding the Presidential internship program, management program—it is sad when you said the internship program is turning off young people rather than turning them on, because the quality of the experiences they are getting is just not stimulating enough. I do not know if you want to comment on that, but certainly that says we should do some changing.

Mr. **Fogel**. Well, I think we agree with the Volcker Commission that it should be expanded. The internship program for most executive agencies has been one of the few ways they have been able to recruit top people the last couple of years.

We certainly favor expanding it. We think the idea of the Volcker Commission to have an expanded program there and to have a scholarship program is very appropriate, but the point we make in our written testimony is that is not going to be sufficient. You are not just talking about 1,000 people. The government hires, and should be hiring a lot more people than that each year.

But to the extent we can establish a scholarship program like the Volcker Commission suggested and involve Members of Congress, just like they appoint people to the military academies, as a prestigious thing, I think that would help. It gets you down into the high schools. It would help begin to project the image that public service is a good thing, just as the Truman scholarship program has done some for college students. But that is not as extensive as perhaps it might be.

Mrs. **Morella**. Well, thank you and I want to thank you, Mr. Chairman for letting me comment at this time so I could go meet my students.

Mr. **Ford**. I have the feeling that some of the comment provoked by newspaper reports of that part of the Volcker Commission report which said that there are too many political appointees immediately got everybody's attention on how many people are in the White House and in the West Wing, or whatever they call the other fudge factory over there.

We get frustrated when dealing with the agencies and it becomes obvious that they have too few people who know the substance of the laws and programs they are charged with administering. A year ago we reauthorized all of the elementary and secondary education programs. We made a lot of substantive changes, some new initiatives. There are no regulations yet, today.

The Chairman of that Committee is now telling the Secretary of Education, we will not do anything for you at all until we get some regulations, so that the school people out across the country can find out how this law that has been on the books for almost a year is supposed to work.

I do not think there is anybody who is deliberately trying to delay issuing the regulations. I think what has happened is that the politicizing of that department from its very inception goes so far down that there is no continuity even with the same political party when you get a change in law.

The continuity becomes lost, because the appointees are shifting to other agencies and other jobs, and the career people who really understand the programs have nobody to sign off on what they are doing.

The Department of Education is an example of an agency that should have established some stability by now because presumably it is popular with people who understand education programs.

That has not been the case for a few years and as a matter of fact the former Secretary wrote a book about it. Ted Bell's book is replete with his complaints about how the imposition of political appointees at the level they were imposed made it impossible to run the agency in a professional manner.

Am I right in the assumption that what Volcker is talking about in reducing political appointees are not the more visible political appointees that are reporting to the President and the Vice President, but people in agencies that are at the operative level?

Mr. FOGEL. I think you are absolutely correct. We did not interpret that what the Commission was talking about had anything to do with the number of people you had in the White House. It had to do with the people in the agencies. Roz would like to point out, too, that even though we have got a limit in the law on noncareer SES people there are ways in agencies that you can have more.

Ms. KLEEMAN. There is a loophole right now in the allocation provision for career and noncareer senior executives. An agency or department is allowed 25 percent of its allocated positions to be noncareer. If that were changed to be 25 percent of the filled positions, I think you would have a much more responsible system. Currently, an agency can leave many of the career positions vacant and go over their quota of noncareers, over their 25 percent quota. I think that change would be a very apt one to correct the situation.

Mr. FORD. Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman. Mr. Chairman, let me play off on a subject that you raised: the notion that there are growing numbers of policy people and reducing numbers of implementation people. I suspect that is particularly difficult, when so many of the policy people are running around saying that—particularly in some of the departments that you mentioned—that service in government is a necessary evil as opposed to a vehicle for accomplishing good in the shared interest. But that is another story for another day.

The real question that I have goes to the goal that you mentioned in number 11 on page 22. That is a part of that. I am convinced that part of the ability to recruit people and keep people of the highest quality is a measure of their perception that the work that they do will be valued and be perceived as of the highest quality.

So that even if their pay is not all that it might have been, that there is some measure of transferability into other sectors where the compensation may even be higher. That is not to say we should not pay well, but it is to say that the perception of the quality of work that is done by government is as high as I hope that you and I share the belief that it is.

That goes right to the question that is reached in goal 11. How do we demand and portray the high quality work that we hope we are getting out of most agencies?

Mr. **Fogel**. I think that part of it has to be the way we market things and it cannot be done in the abstract. It has to be done in the context of talking about the type of service that the government needs to give the people, and we do a lot that is good. On the other hand, there are lots of things we could do better, but I do not think anyone would say that would not be the case in any organization.

I think you have to talk about it in terms of the quality of law enforcement, the quality of environmental protection, the ability of the FDA—which does not have a lot of resources—to do a very good job overall of protecting us in terms of the drugs that come into this country, the ability of the Social Security Administration to basically get the checks out every month, the ability of the IRS to fairly effectively process about 150 million tax returns each year and do it—overall—pretty well, although they have some problems, too.

I think it has got to be done in that context and the public has to understand that the consequence of not doing these functions well directly affects them. Would we not want good people representing us, for example, on the Trade Commission that has to negotiate with other countries? Or would not businessmen certainly want good, efficient export licenses from Commerce? I have not even talked about Defense.

But I think there are lots of positive activities that go on, although the government certainly wastes money. But overall I think people are trying to do very good jobs. I think it is very hard, though, to convince the public that it should not be otherwise. I mean, that is what they have a right to expect out of government. That is why we said in our statement that this is not an issue, from what we have seen, that you can go out and campaign on and get a lot of votes.

But if the Social Security checks are not delivered one month because the whole system breaks down because SSA cannot pay enough to get good, sufficient computer people to design that program, there is no doubt that a lot of people up here are going to get letters. We are going to get a lot of letters from Members of Congress saying, get out there and find out what is going on and everyone is going to get upset. So it is sort of a negative thing that we have to, I think, try to guard against. But I think that it is very hard to get that idea across to the American people.

Mr. **Sawyer**. You talk about demanding competitive performance. I think in most cases we are getting competitive performance, so I think the thrust of your answer is right.

It is a question of marketing in most instances, but in marketing that we have got to have a measure of demonstrable accountability. How do we build that into concurrent need to provide competitively?

Mr. **Fogel**. Well, there are several ways you can do that. First of all, let me talk about, in a narrow context, the type of pay and performance systems we have.

I think we in the government can do a better job of building into our systems pay for performance measures for our own employees.

In a broader context, though, I think we maybe need to be willing to focus more on the outputs of what we are trying to accomplish in various programs and be willing to say this is what we are committed to trying to do, rather than just focus on process. This was something that stuck out in my mind when we did our series of transition reports.

We have spent in this country over $500 billion since the early seventies on trying to improve the environment, and no one doubts in a general sense we have done something, but the Congress and executive branch have really never come into agreement on how we want to measure our progress.

Now, at some point in time it seems to me we have to say okay, what are we willing, all of us, to hold ourselves accountable for doing, and then be willing to try to get the data to show that.

It is easier to do in some other programs, for example, like the IRS or Social Security, but we have talked a lot about air safety in this country and there have been some efforts made to improve it, but my hunch is that we have not done a good enough job and if you ask people today, I do not know that they feel much safer flying around.

But I think that what we have to work toward is looking at output measures. Now, to this administration's credit, we have seen some proposals to have the various cabinet departments focus on several key initiatives and objectives and to try to then measure and hold them accountable. There may be a little more progress in focusing more on output measures than there has been in the past.

Mr. **Sawyer**. Thank you.

Mr. **Ford**. It is pretty hard to find anybody with a positive attitude toward any government employee whether it is state, local or federal.

The recent disaster with the tanker in Alaska is an example. When a disaster happens, almost instantaneously all over the country people say why does not the government do something about it, but that does not translate into "do we in fact have people with the knowledge and the skill and the techniques at their disposal to do something about it."

There seems to be a dichotomy, the public does not trust government or think very highly of people who work for the government. Yet, they know no limits in what they expect the government ought to be able to do in any emergency that arises, that the government really ought to have an answer available for every vicissitude that is visited upon them.

It is as if a constituent comes in to see me and says; "I want you to control the price of the feed for my cattle and guarantee the price of my product, but stay the hell out of my business and let the free enterprise system work." [Laughter.]

And they are not alone.

However, I have found one kind of employee that I think is almost universally popular, and that is a letter carrier. Everybody that I come in contact with around the country has nice things to say about their letter carrier, and then they bend my ear about the terrible postal service because it is the "them" up there someplace in Washington who mess it all up.

If everybody was as nice as their letter carrier, the whole system would work. They have no idea that we spend over $9 billion in the private sector for other people to do things for that postal service. If the postal service breaks down, it is most likely the private contractor who is running the airlines which carry the mail.

The current Postmaster General was a very successful businessman in private enterprise as were his two immediate predecessors. All came from very remarkable backgrounds as successful businessmen, and all of them have told me that the biggest surprise they had when they came to try to run that service was the quality of the people that they had to work with. That coming from the outside, they had assumed that the career people in the postal service would be inferior to the kind of people that reported to them in their private endeavors.

Each of them has been quick—not long after they have been on the job—to assure me—and I am sure John Glenn has been told the same thing—that the biggest surprise they have had is the quality of the managers they deal with and the amount of talent they have.

We still have an awful lot of people who are unappreciated. I recall that about the time we passed the new retirement law—and that was a period of accumulated employee bashing unparalleled in our history—the senior executive association was polling their membership. One of the questions was, "would you recommend that your child choose a career in government." An overwhelming majority of these managers said that they would not recommend that their children follow them into government service.

That stuck with me because almost all of us who have had the privilege of being parents and now in my case grandparents, like to believe that we have conducted our lives so that our kids would like to follow in our footsteps. That is the highest kind of ego builder for a parent to have a child say I would like to be a lawyer like you, Daddy, or I would like to be a good machinist like you or whatever. That is the highest kind of an ego builder you can have.

When a majority of our managers feel so bad about what has happened to them having made a career in government that they would not recommend it to their own children, it is a very strong indicator to me that we have got real trouble.

Pay is part of it, but there are other concerns as well. As a result, a general atmosphere of suspicion has grown up among federal employees. An example of that is what we learned in connection with the retirement reform legislation.

We had the Library of Congress develop a computer model of the demographics of the federal workforce. That computer model told us that of the people who were under the old pension system, probably 40 percent, given the opportunity, should transfer to the new system because it would be advantageous to them. We had an open season to allow employees to effect a transfer to the new system. But the employees were so suspicious of the Congress and the

President, that only 3 percent of the people who could have exercised the option did so.

When we had gone back to find out why, the answer we got more frequently than any other answer is, "I just did not believe that you and the President did anything that would be better than what we had."

We had lost their confidence—both the Congress and the administration—to such a degree that when, in fact, something was offered that for many of them could have been an advantage, they were unwilling to believe us.

Now that people have had more time and they have talked to employees who did make the change, some people are saying they would like to have another chance to exercise that option. So far, we are a little bit afraid of opening the window again until we can cultivate a better sense with the federal employees that we are from Washington and we are trying to help them.

I am afraid if we opened it right now, that we would have very much the same result we had before, because nothing has happened in the last two years to demonstrate to federal employees that anybody really gives a damn about them.

Mr. FOGEL. You know, I think that this committee has done an admirable job over the past decade trying to do the right thing.

One thing that just struck me listening to you and even in my response to Congressman Sawyer is that another group that probably needs to do a better job of supporting the need for good public service are cabinet secretaries. If you talk to most cabinet secretaries as they leave office, they will say the same thing that the Postmaster Generals say—and I have talked to more than several—that they are generally very surprised at the quality of the career people that they have to deal with, and they are very good.

But there is no doubt in my mind that the President has got to take a very strong personal lead in trying to change this situation and, like we said in the testimony, we think he has taken some very positive steps to date, but he needs to take more.

But, one thing that may help the White House decide what their position ought to be is if the cabinet secretaries had a better appreciation of the need for good quality people, career people and others in their departments and then went to the White House and worked on them.

Unfortunately, the extent to which the cabinet secretaries have wanted to accept personal responsibility and accountability for the quality of their work forces and their departments has been very varied over a number of administrations.

So, that is also another group that probably has not been doing what it should have been doing.

Mr. FORD. Thank you.

Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. I regret I had to attend a mark-up earlier this morning in my other committee, and I regret the lateness of my attendance. In skimming through some of the testimony here, Mr. Chairman, I am pleased to join with you in the second of a series of hearings on the report of the National Commission on Public Service.

As we discussed at our initial hearing, the commission chaired by Paul Volcker focused on a number of important and long-lingering problems which do face our federal work force and our entire nation, and we in turn look to our corps of federal employees both in time of national crisis and on a day-to-day basis to provide for us some of the most basic needs of our citizenry.

If we want either job performed effectively and responsibly, we must be certain that we have on call the very best of those who are available.

I believe the Volcker Commission report and these hearings arose directly from a desire to accomplish that kind of an objective, and I want to welcome today's witnesses, and I would like to ask them a few questions.

I understand that you have touched a bit on the need for some locality pay consideration. We have heard from some of our people in the New York metropolitan area. They do have a task force that has been at work up there studying some of those needs.

A full one-third of all of the positions I have been informed were vacant at one time or another during the study period of July 1st, 1987 to June 30th, 1988. Now, I think that vacancy rate is certainly meaningful in demonstrating the stress under which some of our federal workers in the New York metropolitan area have been suffering.

One of the problems has been the determination of that vacancy rate. I understand that OPM analysis of the New York special rate package used a formula that determined the vacancy rate at the very end of the period in which they were studying the rate rather than an annual vacancy rate which was part of the FEB analysis.

I think that is more appropriate, certainly, to make a proper determination. I would hope that as we review what should be done that we take a good hard look, Mr. Chairman, at the need for the kind of area pay differential that is reflected in the current labor market and will reflect the current labor marketing making that kind of a determination. We certainly have a need to do that up in the metropolitan area.

I would like to ask the panel this. With regard to page 3 of the written testimony by Mr. Fogel, you state that you intend to follow-up on the impetus for public service improvement that the commission has initiated and that the GAO will be involved in issues directly related to several of the commission's goals and recommendations.

Could you tell us what issues this would involve and on what specific recommendations you would be focusing?

Mr. **Fogel**. I would be glad to do that, Mr. Congressman. We currently are looking at the pay issue from the standpoint of looking at various options for locality pay. We have a group that Ms. Kleeman heads up that is sort of a policy group that is looking at this issue.

We think that over time we have got to go to some type of locality pay, but on the other hand we are also concerned that we do not want a total breakdown of the general pay system for the government, but we do intend to look at that issue.

We certainly intend to look at the issue of recruitment and the extent to which the agencies are able to mount good recruitment programs, the extent to which they are going to send some of their top executives out to do some of the recruiting, the extent to which OPM is going to be able to follow through on the positive initiative begun by Mrs. Horner to change the recruiting process.

We want to look, too, at the issue of the extent to which there is good leadership in the executive agencies and the relationship that exists between career and political appointees. In carrying out our general management reviews of the various executive departments we try to assure ourselves that there is good continuity in program development and program management.

We also intend to look at and follow up on issues dealing with the extent to which there is good minority representation in the agencies. We have several requests from various committees in the Congress to do those types of reviews at various departments.

We intend to follow up on the Volcker Commission's recommendation to increase government productivity by continuing to look at the various efforts that OMB and OPM and key agencies such as IRS and some defense agencies and SSA have. I trust that gives you a flavor for the type of things we intend to do.

Mr. GILMAN. Well, it sounds like a full agenda, and we certainly look forward to your further reviews and having the recommendations that might come out of those reviews.

Mr. Fogel, the commission recommended that agency heads and cabinet officers be given greater flexibility to hire and fire employees. Can you tell us what specific options Congress should consider if it were to try to implement those goals and as far as flexibility in the hiring process and the degree of training are concerned. Would degree of training and reimbursement for interview expenses and advance payment of basic pay work toward that goal?

Mr. FOGEL. It would certainly help.

I want to use our GAO experience in responding to the latter part of your question.

We would like to interview all the new applicants we hire. Now, we do a lot of that interviewing on the college campuses with our line personnel who go out and do recruiting.

In a lot of instances, too, we would like to have the people that we would like to hire come in and talk to people in the division or in the regional office where they are going to work. That is not a condition at all to being hired, but a lot of times those people want to do that because it makes them more comfortable. They get a sense of the environment within which we operate, and we get a sense of them.

We cannot pay for entry level people to come and interview us. We compete against organizations such as foundations and other nonprofit groups. They may pay—certainly the private sector pays for interviews, and so I think that is something worth looking at.

On the other hand, I would be somewhat concerned about the cost. But it is something that definitely should be explored because it does put the government at a competitive disadvantage in some instances.

As far as the answer to the first part of your question, we are not exactly clear what the Volcker Commission had in mind in terms of decentralization of more authority. We want to look into that more.

Maybe Roz or Bob have some more views on that, but OPM has delegated a considerable amount of authority to the agencies now, and we feel that we have to follow up and read a little bit more in depth what perhaps the working groups for Volcker did to get a better understanding on that issue.

Mr. GILMAN. I note, too, Mr. Fogel, in your report you say the need is evident from the commission's findings that only 30 percent of top college graduates say they would know how to find a federal job if they wanted one.

When you are talking about your 800 number job bank, would that fulfill the need to do that? Should there not be more outreach than that?

Mr. FOGEL. There definitely should be more outreach. I personally fault the agencies more than anyone for that. OPM obviously in the early part of the eighties dropped recruiting altogether. Mrs. Horner, to her credit, started an initiative to bring it back.

But we did not see much evidence that the agencies themselves were out there trying to do a very good job.

If I were running a department, I would not have to wait for OPM to tell me that I ought to get out there and start doing some recruiting and send my top people out to the campuses to try to recruit people.

I think the agencies were sitting back, most of them, not doing the job they should have been doing.

But there is no doubt that when we talk to college students, too, they do not understand how to get in the government. They do not know where to go. They find the forms sort of unclear. The government as a whole needs to do a better job.

Now, that is a leadership role that OPM could play. They had some ideas that they put forward last year that we hope they follow up on.

Mr. FORD. Would the gentleman yield?

Mr. GILMAN. I would be happy to yield.

Mr. FORD. Way back in the Johnson Administration we had a Secretary of Labor, Willard Wirtz, who talked about a national job bank. He made the assertion—I checked with our Committee staff and they verified it—that at that time the Federal agencies did not use the United States Employment Service for recruiting.

Federal agencies did not report vacancies to the Employment Service, which presumably was trying to find jobs for unemployed people. Is that still what happens, or do some of the agencies systematically list vacancies, particularly for clerical jobs and things of that kind?

Ms. KLEEMAN. There is a requirement, in fact, in the Civil Service Reform Act, that agencies give their vacancies to the Employment Service. Some use it for certain positions, frequently clerical positions, but it is not used to the extent we believe might be useful.

I also wanted to add to something Congressman Gilman said. I got a call from one of the agencies last week talking about recruiting and not being able to pay for interviews. This person had just come from Howard University, where they were attempting to recruit some minority engineers. The person in charge at Howard University said, well, I am very sorry there will not be any of our students here for the next week because a company from California has just sent a 747 for all of our engineering graduates—for their families, anyone they want to bring along, for a week, I believe it was in Disneyland with one or two days out to interview with this California company.

Mr. **Fogel**. I hasten to add, we do not propose the government do that. [Laughter]

Ms. **Kleeman**. I am not sure we could compete with that, but I think it is symptomatic of the reasons we are having a problem in getting engineers.

Mr. **Gilman**. Well, I would hope that we would take a look at some options. If we want to bring someone to Washington, for example, to take a look, that we at least pay some of their transportation expense.

I had an opportunity the other day to try to help someone seeking a mid-level position and in examining how we have changed that whole process over the years. I used to be able to get in and get a rating and then have a number of opportunities, from that rating, to apply from a list for positions and I understand that that has been revised considerably in the last few years.

The list has been whittled down to just a very few categories, making it difficult for someone that has some good experience and qualification in the mid-level area, but not being able to get, say, into a computer category, which is a part of that restricted list. How, now, can a mid-level person find a central area where they can find what jobs are available and how do they get a quick rating on those jobs? I think that is part of the problem.

Mr. **Fogel**. I do not know that the three of us here have a good answer for that. We know that there are some central registers that are still kept at OPM, but that has changed over the last couple of years and what I would prefer to do is to ask our experts on that and we will get back to you.

Mr. **Gilman**. I would hope you might take a look at the complexity that a person who has some mid-level qualifications is confronted with in trying to find employment in that area.

Ms. **Kleeman**. Most of them go from agency to agency, to the personnel offices.

Mr. **Gilman**. Well, that certainly is not the best system in the world and I would hope that there could be some central kind of information center. If there could be some central listing of what is available I think that could help considerably and I would hope you might explore that as you make some recommendations.

Mr. **Fogel**. Yes, we will.

Mr. **Gilman**. Thank you, Mr. Chairman.

Mr. **Ford**. I am reminded that we had you folks checking on a beautiful patronage system that had developed in our overseas dependents school system. I discovered after many years of involvement with them that managers do not report vacancies so that they can fill them as emergency spots with friends when it is time for school to start. The practice is pretty widespread.

Experiences like that make a couple of hairs go up on the back of your head when people talk about decentralizing hiring authority. It does not take very long before a lot of nice people start to abuse it. The number of husband and wife combinations that you find in those schools over there is extraordinary.

There is a provision in the law, for example, that says preference will be given to a military spouse for employment. Quite on their own, the personnel offices have interpreted that to be Defense Department spouse. If A gets a job as a teacher and becomes a Defense Department employee, A's spouse becomes a preferred person to be hired at the same place. When we asked OPM to look at it they said it was none of their business and they did not bother with it.

I guess we must have in the neighborhood of 9,000 professional people scattered around the globe in that school system. I was shocked to find that OPM says to us, "it is not our responsibility." I thought they were responsible for what was happening with all civilian personnel.

I do not know whether it is just a custom that developed over there, or how it came to be that while Connie Horner was there they did not believe they had any responsibility to look into that at all. So our limited experiences of that kind really make me a little hesitant about how much local hiring authority you want to give people.

Maybe it is so ingrained because it is so remote from here. The reason that it surprises me is that the Teacher's Union seems to think it is fine. Twenty years ago when I was traveling over there, a principle reason why they were organizing the teachers was to stop that practice. If that practice was tried in any major school system in the United States, there would be a teacher's strike. It does not work out that way with the Federal employees because they cannot strike.

We took our eye off of them for a few years while those of us who had been watching them for years got busy with other things. I came to this Committee as Chairman and it took a lot of time away from my involvement with the Education Committee. Now, the whole thing is back where it was in 1965, with the Office of Personnel Management disclaiming any responsibility. Let the Defense Department worry about it, they say. So in that area, at least, there is already an attitude that the individual agencies have more responsibility.

When we created the Office of Personnel Management some of us thought we were creating a personnel czar for the government; that there would be one person who would be responsible not only to advise and develop policy, but to administer the great Federal civilian work force. But that does not seem to be what has been adopted over there.

We have had only four directors since we created OPM. They started with an academic, then they had Mr. Devine, who I guess was an academic but had an agenda of his own. Then Mrs. Horner was a breath of fresh air who tried very hard to create a genuine personnel agency, but had no cooperation from her former bosses at OMB.

OMB makes more personnel decisions than OPM does. But then OMB runs everybody's business, we are going to be looking into how we can beef up the Office of Personnel Management and give them more confidence and power.

Mr. **Gilman**. I have no further questions, Mr. Chairman. I thank the panelists for being with us today.

Mr. **Ford**. Mr. Gilman and I both have some written questions that we would appreciate your answering for the record.

[The questions referred to follow:]

GAO
United States
General Accounting Office
Washington, D.C. 20548

General Government Division

May 31, 1989

The Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
House of Representatives

Dear Mr. Chairman:

The following is submitted in response to your letter of May 1, 1989, containing follow-up questions to the hearings on the recommendations of the National Commission on the Public Service.

Question 1.

> You indicated some reservations about the Volcker Commission's recommendations for an independent advisory council, representing both the public and private sector and mandated to report periodically to the President on the whole state of the public services of government.
>
> Granted OPM's overall responsibility within government for this purpose, would it not be useful for the President and the Congress to have this kind of independent counsel, reflecting as it would the concerns of the public as well?
>
> There is the further consideration that in government there are a number of agencies and personnel systems that are not among those governed by OPM. A council of the kind recommended by Volcker's group would be one focusing periodically on the entire range of personnel issues and problems that need the attention of leadership.

Response

We agree that an independent advisory council charged with monitoring and reporting to the President on the state of the public service would be useful. Indeed, the Volcker Commission itself was a demonstration of the value of such a group. We are supportive of any mechanism that will result in greater attention to the need to improve the public service. We continue to believe, however, that the overriding need is action to resolve the problems already identified. We also believe that OPM needs to provide more leadership in exercising its responsibilities as the President's chief steward of federal personnel policies.

Question 2.

> The Volcker Commission proposed a publicly supported program of 1,000 scholarships annually, their selection patterned on the military services' academy procedure.
>
> You appear to discuss their ideas as "only a small step" to obtain the quality that government needs.
>
> Granted that the problem would be small and selective, isn't there merit in exactly that kind of approach, encouraging in that fashion more of our best and brightest to consider entry into government career and at the same time attaching this kind of prestige and merit to the concept?

Response

As indicated in my prepared statement, we believe the proposed Presidential Public Service Scholarship Program should be seriously considered. The program would undoubtedly attract the most promising students to participate and thereby enhance the prestige of federal service. By encouraging the best and brightest to pursue government careers, the scholarship program should also provide a nucleus of top talent for eventual leadership positions in federal agencies. But, we must reiterate that the number of participants will be small in relation to overall federal employment, and government service must be made more attractive to other prospective employees as well. It also bears repeating that good employees must be retained once they are in government service. They won't stay if their working conditions, pay rates, and the opportunities and challenges they are given are not up to their expectations.

Question 3.

> You refer in your testimony to advice and recommendations GAO had made over the years to improve federal government management. How would you describe GAO's role in personnel policy formulation?

Response

GAO has played, and intends to continue to play, an important role in providing information to assist Congress in formulating personnel policy and in recommending to the Executive Branch ways to improve federal human resource management. We make independent assessments of policies in practice. For example, our analyses of the features and benefit levels of nonfederal retirement programs were relied upon extensively in the design of the new Federal Employees

Retirement System. Similarly, work we are doing now at your request in evaluating the operations of the Federal Employees Health Benefits Program will help Congress as it considers reforms to that program. We believe our planned studies of the issues of locality pay and flexible benefit programs for federal employees will be very useful in deliberations on these issues. At any time, we have a number of reviews in process on issues related in some manner to federal personnel policy and management.

Question 4.

> You refer in your testimony to the intent and provisions of the Civil Service Reform Act of 1978; does GAO see the Reform Act as a sufficient legislative foundation for the improvements needed in federal personnel management?

Response

Yes. We believe the Reform Act provides the direction and flexibility agencies need to properly manage their workforces. In general, we see problems associated with the Reform Act to be more of ineffective implementation by OPM and the agencies rather than any shortcomings in the act itself. Of course, some of the problems the Volcker Commission stressed as needing attention, such as inadequate pay levels and higher ethical standards, relate to matters covered by other statutes.

Question 5.

> In the attachment to your testimony, you suggest ways to accomplish the Volcker Commission's goal of reducing the number of political appointees. You also state that the appointment of career executives to top-level jobs is a good idea.
>
> What are your views of the type of subcabinet appointments which should be set aside for career employees?
>
> Would you consider it more appropriate to establish career reserved Executive Level positions or would you prefer the broader flexibility of a percentage set aside as career reserved?

Response

We do not believe there are necessarily any types of sub-cabinet positions that are best suited for career or noncareer employees. We agree with the Volcker Commission that career employees would be appropriate for virtually any sub-cabinet positions. If set-asides are to be used, we believe the percentage approach would provide sufficient flexibility and control over the appointments without reserving specific positions for career employees.

Question 6.

> In your testimony, you cite OMB's recurrent failure to recognize the "adverse consequences of decisions dictated by short-term budget considerations on the long-term effectiveness of programs and the people who manage them." For this Committee, that has meant a constant fight over attempts to cut employee pay and benefits. This year's bipartisan budget agreement and action by the House and Senate Budget Committees suggests that fight may be behind us.
>
> Even with this optimistic outlook, how do you envision being able to sell the budgeteers on the notion that short-term costs will yield long-term benefits in terms of the Government's ability to recruit and retain and increase productivity?

Response

That is a very difficult question. The long-term consequences of short-term budget considerations are not always apparent. Current recruiting and retention problems appear to vary by agency, location, and type of job, but they do exist. More importantly, we may be seeing just the beginning of the problems unless changes are made.

It stands to reason that the best people are not going to come to the government, or stay, when its pay rates for most jobs average 22 percent behind the private sector. That is 22 percent behind the 50th percentile of private sector salaries. In other words, the best employers, salary-wise, pay more than 22 percent higher salaries.

The gravity of the situation is clearly demonstrated by statistics we have seen on starting salaries paid to college graduates. From 1977, the last time a full comparability raise was granted to federal employees, through 1987, starting salaries of college graduates reportedly went up 126 percent in consulting and research organizations and the same 126 percent in banking, finance, and insurance companies. Public school teachers' starting pay increased 90 percent. Federal starting salaries increased 59 percent. It takes a lot of "psychic income" to offset those kinds of pay disparities.

Our surveys of installation heads, personnel directors, personnel officers, and OPM officials disclosed a widespread perception that recruitment and retention of quality employees is becoming a severe problem.

-- From 40 to 71 percent said the ability to hire good employees had worsened in the past 5 years.
-- From 40 to 77 percent said retention of quality employees had worsened in the past 5 years.

The problems are not limited to rank and file workers. For example, our survey of over 1,800 installation heads showed that only 18 percent thought they were recruiting and retaining highly competent and qualified SES managers to a great or very great extent. Fifty-eight percent answered some, little, or no extent to this question. In a survey we did of SES members themselves, only 13 percent said they would advise people beginning their careers to enter public service.

There are costs associated with these identified problems that the budget decisionmakers may not be taking into consideration. Increased turnover causes greater hiring and training expenses; earlier retirements increase pension outlays; and the loss of experienced personnel or the hiring of less qualified employees than desired can lead to inefficient and ineffective program operations.

We believe evidence such as this is persuasive as to the need for a longer-term perspective on federal personnel matters.

Question 7.

> You mentioned that GAO has tried to implement the concepts of good working conditions and a performance management system.
>
> What is the present status of GAO's pay for performance system? What are the budget implications of your new system and how has that been accommodated through the budget process, both in Congress and within GAO?

Response

In the conference report to accompany the fiscal year 1989 Legislative Branch Appropriation Bill, GAO was authorized to proceed with the implementation of its Pay-for-Performance (PFP) system, but no new funding was appropriated.

We will put our new PFP system into effect on June 16, 1989. On that date, our evaluator and evaluator-related staff in grades GS-7 through GS-15 will be converted to a broadbanded system. GS-7 through GS-12 staff will be placed in Band I; GS-13s and GS-14s in Band II; and GS-15s in Band III. GS designations will disappear. Once in the system, staff will earn permanent salary increases and bonuses based on their performance and contributions to the agency. The permanent salary increases will be first awarded in October 1990.

We will implement the first phase of the PFP system with bonus payments scheduled for the end of fiscal year 1989. These bonuses will be distributed to evaluators, attorneys, and evaluator-related specialists who are ranked in the upper half in performance excellence during the year. The cost increase over the old GS system for the payment of bonuses amounting to $2,425,000 in both 1989 and 1990 will be offset in part by savings in incentive awards of $585,000 in 1989 and $702,000 in 1990.

The June 1989 change to a broadbanded system will result in a one-time conversion cost of $1,081,000 paid in fiscal year 1990. This one-time cost is included in our fiscal year 1990 request to Congress.

The following chart shows the costs associated with PFP that are included in our fiscal year 1990 Justification of Estimates. The additional PFP costs of $1,840,000 in fiscal year 1989 and $2,804,000 in fiscal year 1990 represent an increase in personnel compensation of about one percent in each fiscal year, over what we would require without implementation of PFP.

BOC*	Description	FY 1989 (Without PFP)	Net Change	FY 1989 (With PFP)
11.1	Personnel Compensation	$215,380,000		$215,380,000
11.5	Other Personnel Compensation	1,871,000		1,871,000
	PFP Bonuses			2,425,000
	Incentive Awards			- 585,000
	BOC 11.5 Total	$ 1,871,000	+$1,840,000	$ 3,711,000
	Total - 1989 Change		+$1,840,000	

BOC*	Description	FY 1990 (Without PFP)	Net Change	FY 1990 (With PFP)
11.1	Personnel Compensation	$230,311,000	+$1,081,000	$231,392,000
11.5	Other Personnel Compensation	2,149,000		2,149,000
	PFP Bonuses			2,425,000
	Incentive Awards			- 702,000
	BOC 11.5 Total	$ 2,149,000	+$1,723,000	$ 3,872,000
	Total - 1990 Change		+$2,804,000	

* BOC = Budget Object Class

All employees will continue to receive general salary adjustments as they are authorized in Executive Orders.

Question 8.

In urging that civil service pay be given a higher budget priority, the Volcker Commission also suggested that "a substantial portion of the costs [of pay raises] can be absorbed through existing personnel accounts (whether through reductions in employment or the elimination of programs that no longer serve essential public needs).

Given recent budget mandates that agencies absorb greater and greater portions of even modest comparability pay adjustments, could you comment on the practical impact of this recommendation on pay absorption?

Response

The Commission is undoubtedly right in its assertion that there are areas of federal operations in which savings could be realized and used to help fund needed pay increases. We agree with the Commission's suggestion that the President and Congress should strive to eliminate duplication of services and unnecessary layers of government in attempts to accomplish savings. As discussed in my statement, any appropriate changes in these areas should be made regardless of whether employee pay is to be increased.

We do not believe it is practical to expect agencies across the-board to absorb greater and greater portions of pay increases and still fulfill their missions, particularly those agencies which are people intensive. Several of our studies have found that, because of budget limitations, some agencies simply have too few people to do their jobs well. The result is degraded performance and a demoralized workforce, leading to difficulties in providing services and further deterioration in public perceptions of the civil service.

Question 9.

> Other than pay compression, what are the 2 or 3 most critical issues that need immediate attention?

Response

Other than pay, we believe the most critical personnel-related issue affecting federal agencies is the need for effective workforce planning. Agencies must do a better job of determining the skills and numbers of employees needed to do their work. OMB and Congress must then give serious credence to the results of workforce planning in formulating agency budgets. In other words, if Congress authorizes a program to be undertaken, it must also see that appropriate resources are devoted to accomplishing the program's objectives. Because of unpredictable budgets, employment ceilings and other arbitrary workforce limitations, and mandates to absorb pay increases within existing budgets, agencies have generally lost any incentives to do effective workforce planning.

The issue of locality pay for federal white-collar employees deserves a high priority as well. This is an issue that needs considerable study about its desirability and design. However, it is evident that differences in the cost-of-living among geographic areas can cause significant differences in employees' purchasing power from area to area. Similarly, differences in private sector pay rates by locality affect the degree to which the government is competitive in local job markets. Thus, locality pay is deserving of attention from both an equity and a competitiveness standpoint.

The list from which other priority issues could be selected is long--more flexible benefit programs, updated classification system, control over the number of political appointees, increased training and developmental efforts, better performance management systems, improvements in recruiting and hiring practices, and enhancing the public perception of federal employment. Congress and the Executive Branch need to be concerned about all these problems in embarking on a conscious rebuilding of government institutions.

Question 10.

> You say that GAO has tried to implement the concepts of providing good working conditions and a performance management system that effectively rewards good performers.
>
> Do you mean that you have not been entirely successful and, if so, what has prevented you from doing so?

Response

I did not mean to imply that GAO has been unsuccessful in our efforts to improve employee working conditions and our performance management system. We are making significant investments in modernizing the workplace for our employees through such efforts as the purchase of a large number of computers for the staff's use and refurbishing our building and office space. Similarly, we are adopting a broad-banded classification system to provide our managers a greater capacity to meet changing needs and to more effectively use staff. Our managers are also being given more flexibility to pay people for excellent performance and thereby reward our best contributors in a more meaningful way.

What has me concerned is that we have not been entirely successful in getting other agencies to adopt similar concepts.

Question 11.

> Is there a public relations role for the Congress to play in sensitizing the public at large to the importance of having a quality public service?

Response

Congress can play an important role in obtaining public support for a quality public service. Insistence on attention to "people" issues in confirmation, oversight, and legislative hearings would show the importance Congress attaches to such issues. Individual Members of Congress could also stress the accomplishments and importance of the public service in speeches and newsletters to their constituents. Members could assure that they do not engage in "bureaucrat bashing" in election campaigns and other appearances, and, instead, emphasize the essential role that public servants play in carrying out the day-to-day processes of government that affect and enrich the lives of all citizens.

I trust that we have been responsive to your questions.

Sincerely yours,

Richard L. Fogel

Richard L. Fogel
Assistant Comptroller General

Mr. **Ford.** The committee will stand in recess until 2:00 p.m.

AFTERNOON SESSION

Mr. **Ford.** We will pick up where we left off from this morning.

This afternoon we have Dr. Thomas McFee, Assistant Secretary for Personnel Administration, Department of Health and Human Services, and Dr. James B. Wyngaarden, Director of the National Institutes of Health.

Without objection, the prepared testimony from both of the panelists will be inserted into the record immediately preceding their presentation, and you gentlemen can proceed in any order that is most convenient for you to add to, supplement, highlight or summarize your statements.

[The prepared statement of Mr. McFee follows:]

STATEMENT OF
THOMAS S. MCFEE
ASSISTANT SECRETARY FOR PERSONNEL ADMINISTRATION

I am pleased to be here to discuss my observations on the Report of the National Commission on Public Service, known as the Volcker report. With me today is Dr. James Wyngaarden, the Director of the National Institutes of Health, who will discuss select findings of the report as they relate to NIH.

As a participant in the joint Brookings - American Enterprise Institute symposium on a national public service for the year 2000, which recommended the formation of what became the Volcker Commission, I am, on the whole, very happy with the report and supportive of its goals. I believe, as did the members of the Commission, in the value of and need for a strong and ready public service. I believe our Federal bureaucracy is one that is and ought to be a model for other nations.

Since I am generally in agreement with the goals of the report, I will limit my comments to those areas where I have alternative approaches and additional ideas for achieving those goals based on my experiences over the past 12 years as Assistant Secretary for Personnel Administration in one of the largest and most complex of all Federal agencies. My comments will focus around the report's three major themes for rebuilding the public service: leadership, talent, and performance.

LEADERSHIP FOR GOVERNANCE

I surely believe one of our primary goals must be to restore and rebuild the public's trust in government. While the Commission's recommendation that our nation's top leaders articulate often the vital role of public servants is a good start, the public's trust must be earned, and in order to earn it we must give service that can be trusted. Quality service has to be nurtured and reinforced at the grass-roots service delivery level if we are ever to truly gain the public's confidence. I believe active support from the top for quality management and employee participation programs is vital to this effort, and plan to continue pursuing these types of initiatives at HHS.

The Commission makes a recommendation concerning a permanent independent advisory council composed of members from both the public and private sectors, and I certainly support that concept. In fact, a few years ago, I headed a study on Improving the Management of Human Resources in the Federal Government through Private/Public Partnerships. This study was sponsored by the President's Council on Management Improvement (PCMI) and concluded that the Federal government could benefit from many of the human resource management practices used in the private sector. Seven Federal agencies tested ten private sector practices and determined that these practices could be successfully transferred to the

Federal sector.

The PCMI study report recommends the creation of a joint public/private roundtable composed of senior public and corporate human resource managers to continue cooperative efforts and exchange ideas on workforce management. This recommendation, similar to the one made by the Commission, is more timely than ever. Both public and private employers are facing dramatic demographic changes which are becoming visible today and will be in full swing in just 10 years. Workforce trends for the year 2000 include a reduction in the rate of growth of the labor market, and therefore greater competition for new workers; an aging workforce due to the aging of the baby boom generation; a rapid increase of women, minorities, and immigrants entering the labor force; a less skilled and educated supply of new workers; and an increase in jobs requiring greater education and skills at the expense of less-skilled jobs. These issues don't affect just the government or just the private sector. They affect the entire nation, and therefore the national labor force from which both we and the private sector must draw our human resources. There is little doubt that competition between American employers has already begun for the best of a dwindling supply of new workers. If we as a nation are to remain competitive with other countries, the public and private sectors will need to work together to make the best use of the resources we have today and those we will have tomorrow.

Next, the Volcker report discusses the need to make more room near the top for career executives. The number of noncareer placements may be a problem in some agencies, but in my view, the record at HHS shows no need for concern. Let me explain.

While current law permits up to 25 percent of Senior Executive Service positions in an agency to be filled by noncareer appointees, data shows that noncareer appointments in HHS have rarely exceeded 10 percent, and typically have been at 9 percent. The number of Schedule C appointees in this Department has also remained fairly constant, averaging around 100 over the last 10 years.

Since 1985, HHS has maintained a list of key SES policy-making and advisory positions -- those most critical to the success of the Department's mission and of particular import to the Secretary. All positions on this list, representing about 35 percent of our 600 allocated SES slots, could be filled by either career or noncareer appointment depending on the Secretary's preference. However, we have worked with our political leadership to determine those positions which would be most appropriately filled by noncareer appointment and those which would be most appropriately filled by career appointment. In almost all cases I believe we have been successful. Over time the vast majority of our noncareer SES appointees have been placed in top policy-determining positions, leaving many other challenging opportunities for our careerists to direct and administer major programs and to recommend policy strategies.

I believe Congress has sent a clear message by significantly increasing the number of Presidential positions subject to confirmation. They want to ensure, publicly, that appointees to the highest positions in government have the qualifications and credentials to guide major programs in which the President and the Congress have keen interest and which are crucial to the American public. They are assuring accountability to their constituents and rightly so. In HHS, three positions have been elevated to Presidential/Senate status in recent years: the Administrator of the Health Care Financing Administration in the mid-1980s, and the Commissioner of Food and Drugs and the Assistant Secretary for Family Support, both just in the last few months. In my view, these were appropriate decisions based on the incredible responsibilities of these three jobs.

Thus, here in HHS I do not feel that there is a burden of excessive political appointments. One could even question that with such a complex, varied mission, and a workforce of 120,000, that 200 noncareer appointees are sufficient. In summary, contrary to the Commission's view, I do not believe that the number of political appointees is a problem -- the real issue is their placement in the right positions.

ENRICHING THE TALENT POOL

The second major theme in the Commission's report centers on enriching the talent pool from which we will draw our future workforce. While it goes without saying that we must spark the interest of our young people in public service, I think the thrust of the Commission's recommendations must be expanded beyond schools of public affairs to include students at all academic levels and in all academic disciplines -- the public service must be fully representative of the public it serves.

I find that student understanding of the functions of government, and of the contributions of public servants to the public good lie at the very heart of the issue of rebuilding student interest. Too many young people today do not understand what government "does" and how vital a role public servants play in seeking solutions to such public problems as AIDS, environmental pollution, the savings and loan crisis, etc.

I believe that our efforts must reach to all levels of our educational system. Our children's view of the world is shaped from the earliest years of their educational experience. Our focus must be an active one, not merely reexamining our civics, social studies, and history curricula -- though this is certainly a worthy goal, but, making such curricula come alive. We need real public servants -- including our shining stars (in the public health community for example) -- to get out and talk with and become visible to our young people, to personally convey the excitement and rewards of public service. Too often, our young people only hear the "bad sides" of government. Children and adolescents look for heroes and what better way to showcase public service then to offer public servants as heroes whom they can look up to and emulate.

The Commission's proposal for a Presidential Public Service Scholarship Program represents a worthy goal; however, I would caution that the incentive must not only be a financial one. Rather, the attraction of such a program must lie in both stature and substance. Public service must be viewed as a prestigious venture, and one which offers a unique opportunity to be a participant in solving the nation's ills and serving the public good. Otherwise, we run the risk of losing scholarship recipients after they have completed their service requirements-- of winning in the short term, but losing in the long term.

With respect to the Commission's emphasis on expansion and strengthening of current government programs for recruiting college graduates into public careers, I can only offer support. At HHS, we have made extensive use of the Presidential Management Intern program -- in fact, over the past several years, it has served as one of our main sources of bringing in generalists from outside the government. To give you some numbers, we have hired

93 interns since 1986, the most placed by any Federal agency in recent years. In 1989, we expect to hire about 60 more. In strengthening this vehicle, I emphasize again the need to expand our source pool beyond the more traditional public affairs and public administration graduates. While such disciplines provide us with critical generalist talent, we also need to reach more graduates in business, science, and other fields.

In the area of opening new channels of communication, I can only support such proposals as offering our senior and mid-level executives as "ambassadors of the public service" on our college campuses. This is not unlike the suggestion I made earlier to offer more public servant "heroes" to our younger students. Representatives -- preferably those "stars" I mentioned before -- of the public sector need to get out there alongside recruiters from the corporate sector to "spread the gospel" on the substance and rewards of careers in the public sector. And those on-site recruiters could certainly be supplemented by easily accessible information on specific government job opportunities -- as in the Commission's proposal for a unified federal job bank.

I join the Commission in applauding OPM's "Career America" project. The first-class recruiting brochures, combined with plans to speed up the hiring process, should go a long way toward restoring the government's viability as a potential employer with the nation's college students.

A CULTURE OF PERFORMANCE

Now I would like to share my observations on the third major theme presented in the Commission's report: building a culture of performance. On the issue of pay, I doubt that there will be many arguments against the Commission's goal of providing competitive and equitable salaries for Federal employees. In his testimony, Dr. Wyngaarden will be giving you specific examples of some of the critical and immediate problems the Department is facing because of our inability to offer a competitive compensation package to potential senior biomedical research recruits. While pay is a very real problem, I firmly believe that pay reform by itself will not prove to be a cure-all. Instead, I think it's time we took a hard look at the entire Federal personnel system in light of today's needs and realities.

The "cookie cutter" -- by which I mean single system -- approach to personnel and pay may have been appropriate 40 years ago when Federal programs were fairly stable and the workforce was a more or less homogenous one. However, it is hardly adequate today given the tremendous growth in the kinds and numbers of programs we administer and the increasing diversity of the people who administer them. Further, the current system stresses administrative procedure at the expense of management flexibility.

The Volcker Commission has set as one of its goals, which I fully support, a move to greater agency flexibility and autonomy in the human resource management area. But that isn't enough. I believe we need to take it one step further and look seriously at making fundamental changes to the system itself -- more how the process takes place, rather than where it takes place. These changes will require legislative action.

For example, the Administration's proposed Civil Service Simplification Act, which builds upon the Navy's highly successful experiment with a simplified personnel system at its China Lake and San Diego laboratories, would greatly increase system flexibilities on a permanent and government-wide basis. The proven advantages to this proposal are many: pay-setting flexibilities that provide a built-in degree of market sensitivity to the recruiting process; the ability to more directly tie pay to performance; and reduced administrative burden on managers resulting from a greatly simplified job classification process. Managers, instead of being captives of the process, would be its controllers.

In addition, other proposals have been introduced which would move us toward simplification. An example is last year's Federal Personnel Improvements Act (S. 2530) which, among other things, would have increased the number of allowable demonstration projects under the Civil Service Reform Act and provided increased pay flexibilities -- like recruitment and retention bonuses and expanded authority to grant advanced step rates to new appointees.

For all its merits, though, I think we also need to look beyond simplification -- to building more flexibilities into the total compensation -- not just pay -- package we offer. The need has already been identified: in a 1986 survey conducted by the Merit Systems Protection Board, some 40 percent -- not surprisingly -- of HHS employees responding cited salary as a reason to consider leaving government employment. Perhaps more surprisingly, though, 25 percent would consider leaving because of health insurance benefits and 20 percent because of the retirement system. Surely, these are not insignificant findings and point to a real need for benefits as well as pay reform if we are to compete successfully for and be able to retain top-notch talent.

We need to explore options such as portable pension plans and a cafeteria approach to benefits packages. The best way to accomplish this may well be to expand the Civil Service Reform Act authority for research and demonstration projects to encompass the benefits area.

Let me now turn to productivity, another area where no one will argue the need for improvement. We need to continue recognizing government organizations and groups that provide quality service, thereby setting an example -- and providing an incentive -- for all of government. I believe that allowing greater local management control over pay and bonus decisions will allow managers to staff their organizations in a way that will increase productivity. Recognizing that successful performance in our organizations is not always an individual affair, we should consider experimenting with group and organizational based systems where all employees share in any rewards. I endorse the Commission's recommendation that gainsharing experiments be promoted and expanded. Many gainsharing experiments can be conducted under existing authority. In fact, our Social Security Administration has an ongoing project in this area.

SUMMARY

In closing, I want to emphasize again that the National Commission under Paul Volcker's leadership has done an outstanding job in framing an agenda and articulating goals for rebuilding the public service. I have seen some of the detailed appendices that supplement the report. They offer valuable information we can use to focus our efforts in human resource management for years to come. Most importantly, the Commission has brought to the fore of public consciousness the need to face, head-on, issues that will help promote quality in the operation of Federal programs and delivery of services.

I believe public service is the highest calling one can have. Government is not a faceless mass removed from its citizenry in some far away capital city. Nor is it an assembly of its highest elected officials. Government -- that is, public service -- is the service that people provide to the people to promote the general welfare. In that regard, Mr. Volcker and the Commission members have excelled and we are in their debt.

This concludes my prepared statement. I am happy to answer any questions you may have at this time. Or, if you wish, following Dr. Wyngaarden's remarks, both he and I can respond to your questions.

STATEMENT OF THOMAS S. McFEE, ASSISTANT SECRETARY FOR PERSONNEL ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. McFEE. Mr. Chairman, I am very pleased to be here today to discuss my observations on the report of the National Commission on Public Service.

As you had mentioned, Dr. Wyngaarden is with me, and he will be discussing some select findings of the report as they relate to the National Institutes of Health.

I was very pleased with the report. I was one of the participants in the Brookings and the American Enterprise Institute's symposium that suggested that the National Public Service Commission be established and, on the whole, I agree with most of the recommendations of the commission.

I think the commission did a very valuable service in preparing this report for the public. Because I agree with most of it, I am not going to comment on all of its areas, but I would like to comment on a few alternative approaches and some additional ideas that I have for achieving those goals.

Based upon my experience over the past 12 years as the Assistant Secretary for Personnel in one of the largest and most complex of all of the federal agencies, I have organized the testimony around the three major themes that the report addresses: leadership, talent and performance.

First of all, I surely believe that one of the primary goals of the whole government is to restore and rebuild the public trust in government, and I support the commission's recommendations that the nation's top leaders go out and articulate this, and that is a very good start.

But I also believe that the public trust is something that cannot just be articulated by the nation's top leaders but is something that must be earned.

And I believe that quality service is something that needs to be nurtured and reinforced at the grass roots service delivery level if we are ever to be truly worthy of gaining the public's confidence.

If you go out and talk to the public and look at what they see as government, it is those district offices of the Social Security Administration, it is the local offices of IRS, et cetera, that to the public is truly government.

And we must continue, I think, to push for good service delivery and quality management, and I can assure you that efforts in the Department of Health and Human Services in this area will be continued.

The report also makes some comments about a permanent advisory committee made up of members of the public and the private sectors, and I support this.

I point out in my testimony that I chaired a task force that produced a report in the last year on improving the management of human resources in the federal government through public-private partnerships. This study was sponsored by the President's Council on Management Improvement.

It was an interagency effort made up of a number of federal agencies and it not only found exemplary management practices in the private sector, but piloted them in the federal government and found out that they were transportable and they were indeed relevant to the public sector.

The report went on to recommend that there be something very similar to the public-private relationship that is suggested in the commission's report, and in my prepared testimony I state—I think quite effectively—that the need for such a relationship has never been greater than it has been at this time.

The changes in the composition of our work force, the changes in the demographics of our nation are going to require some tremendous efforts on the part of human resource managers in both the public and the private sector, and cooperation between the public and the private sector is very, very important if we are going to retain that competitive edge that we are going to need in this country.

The Volcker report also discusses the need to make more room near the top for career executives, and I fully support that concept. But I want to point out to you that the problem with the number of noncareer jobs in HHS has not been a concern of mine, and I do not think has been a major problem.

Most of you know that the law that set up the civil service system and set up the SES allows up to 25 percent of those SES positions to be filled on a noncareer basis, although the total number of positions across the federal government cannot exceed 10 percent.

In our department over the last ten years it has rarely exceeded 9 percent, and the number of Schedule Cs has remained constant, about 100 over the last ten years.

We have worked out, I think, a very good arrangement in our department with the top SES policy-making jobs. We have had in place since 1985 a list of key SES positions, and the positions on that list which include, by the way, about 35 percent of our 600 allocated SES slots, could be filled by either career or noncareer appointments.

And we have worked out a way where every time a job comes open, we work with the political leadership to decide the most appropriate appointment vehicle to use to fill that job. That is, whether it should be filled by political or a career appointee.

I think, in almost all cases, we have made the right choices. And over this time, most of our noncareer appointees have been placed in top policy-determining positions where the need for a noncareer appointee is important, and it leaves many other challenging opportunities for our careerists to direct and administer major programs and to recommend policy strategies.

In addition, the Congress has actually established additional presidential appointees requiring Senate confirmation in our department. In the last two or three years, three such positions have been established: the Administrator of Health Care Financing in the mid-eighties and, most recently in the last few months, the Assistant Secretary for Family Support and the Commissioner of the Food and Drug Administration. I believe these decisions were very appropriate considering the importance of these jobs to both the administration as well as Congress and your constituents.

So, in summary on this particular area, I do not feel that HHS has had an excessive burden of political appointees. In fact, one could even question with such a complex and very varied mission and a work force of some over 120,000 people, whether 200 noncareer appointees were sufficient.

In summary, contrary to the commission's views, I do not believe that the numbers of political appointees is the problem. I believe the real issue is their placement in the correct positions.

The report goes on to make recommendations around enriching the talent pool from which we will draw our future work force, and there I think they have hit a very responsive nerve and agree we must spark the interest of young people in public service.

But I believe that the commission's recommendations must even be expanded beyond the schools of public affairs and public administration to all academic levels and all disciplines.

I find that the students' understanding of the functions of government and the contributions of public servants to the public good lie at the very heart of the issue of rebuilding student interest in government service.

Too many young people today do not understand what government does and how vital a role public servants play in seeking solutions to public problems such as AIDS, environmental pollution, the savings and loan crisis and I could go on and on.

And I believe that our efforts must reach all levels of our educational system, not just the graduate schools and the college levels because our children's view of the world is shaped from the very earliest years of their educational experience, and I think we need to have a very active focus, not just on reexamining civics and social studies and history as the commission suggests, but making such a curriculum truly come alive.

We need real public servants, our shining stars like those in our public health service community, for example, to get out and talk with and become visible to our young people; to personally convey the excitement and the rewards of public service.

The commission also makes a proposal for a presidential public service scholarship program, and I think that is a very good idea. But I would like to point out to the committee that the incentives need not only be financial, in fact, probably should not be, but we need to include as part of that public service scholarship program both structure and substance, and we must create an environment viewing public service as a prestigious adventure and one which offers a very unique opportunity to be able to participate in solving some of this nation's ills.

Otherwise, I see these scholarship programs running the risk of attracting people, but as soon as they have completed their service obligations, they would leave public service. Sort of winning in the short term, but losing in the long term.

The commission also makes some recommendations on expanding some of our present programs like the President's management intern program. I support that. I believe that our department has made very great use of that. I would urge that the source of people for this go beyond the traditional public affairs and public administration graduates and get out into the fields of business, science, and other fields.

I also, as I mentioned before, like the idea of sending out some of our senior and mid-level executives as ambassadors of public service and would like to support that. We are already doing some of that. We need to do even more.

I envision these people going out alongside of our recruiters so that the people that we are trying to contact and attract into government will be able to see what really is available and what contributions can really be made so that we can successfully compete against the private sector.

In closing, the last part of the report addresses the culture of performance, and here I think there are some very, very important statements made. I will not comment on the issue of pay. I think enough has been said about that, and Dr. Wyngaarden will, I think, give you some very explicit and specific examples of the drastic need for pay reform.

I would like to leave with the committee the realization that there are other problems with the personnel systems that we are dealing with, and pay reform is not the only thing that needs to be looked at.

I would like to stress that in my many years of government service, I have concluded that the cookie cutter approach (by which I mean a single system that works for everyone) to the personnel and pay system in government may have been appropriate some 40 or 50 years ago when the work force was fairly stable and was more homogeneous than it is today. But it just does not work in today's environment.

In fact, the systems that we have to deal with both as managers and personnelists are systems that stress administrative procedure at the expense of management flexibility.

The Volcker Commission made some very good recommendations in the area of giving agencies greater flexibility and autonomy. But I would like to urge that we go even one step further and look seriously at making some fundamental changes in the system itself.

The administration has proposed a civil service simplification act. I urge you to look at that again, and some of the benefits that that would give to managers are vital in the very dynamic work force that we are managing today.

We would like to view these as allowing managers who today are becoming captives of the process to be controllers of the process.

Even though we should look at the system itself and its simplification, I think we need to look beyond just simplification and look at the whole compensation package, not just the pay side of it.

The need has been identified in a number of areas. In 1986 a survey conducted by the Merit System Protection Board in our department found that some 40 percent, not surprisingly, of HHS employees who responded cited salary as a reason to consider leaving government.

But, perhaps more surprisingly, 25 percent would consider leaving government because of health insurance benefit problems, and 20 percent because of the present inflexibility in the retirement system.

And surely, these are not insignificant findings and point to a real need for benefits reform as well as pay reform if we are going to be able to compete successfully and retain top notch talent.

I do not have any proposals as to what we need to do to fix the benefit system or the retirement system in other ways, but one way to find out what would work would be to expand the Civil Service Reform Act authority for research and demonstrations to allow experimentation in the benefits area, which is prohibited by the current statute.

I also make some comments in my prepared statement about other experiments that we could be involved in to assist us in improving productivity in government. Again, the commission recommends continuation of gain sharing experiments that will assist managers in providing incentives for increased productivity.

In closing, I want to emphasize again that the National Commission under Paul Volcker's leadership has done an outstanding job in framing an agenda and articulating goals for rebuilding the public service. I have seen some of the detailed appendices that supplement that report. They offer very valuable information that we can use to focus our efforts in human resource management for years to come.

But, more importantly, the commission has brought to the fore of the public consciousness the need to face head-on the issues that will help us promote quality in the operation of federal programs and the delivery of services.

I happen to personally believe that public service is the highest calling one can have. I believe that government is not a faceless mass removed from its citizenry in some far away capital city, nor is it an assembly of its highest elected officials. Government, that is public service, is the service that people provide to the people to promote the general welfare of the nation. And in this regard, Mr. Volcker and the commission have excelled, and we are in their debt.

That concludes my comments, and I would like to now turn this over to my colleague, Dr. Wyngaarden.

[The prepared statement of Dr. Wyngaarden follows:]

STATEMENT BY

JAMES B. WYNGAARDEN, M.D.

DIRECTOR

NATIONAL INSTITUTES OF HEALTH

PUBLIC HEALTH SERVICE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

I appreciate the opportunity to address the Committee and present my views on the report of the National Commission on the Public Service. I will focus on those recommendations relating to recruitment and retention of senior career officials, and will discuss the impact these problems are having on this Nation's Federal biomedical research programs.

The Commission sounded an alarm that the uncompetitive salaries of members of the Senior Executive Service are undermining the Government's vital science programs. Their report warns that the failure to increase these salaries will substantially diminish our ability to recruit and retain the highest quality biomedical researchers, engineers and other senior career executives who manage essential services in the Government. The report suggests that the urgency of raises for career Senior Executives may be even more critical than at the political level. The Commission recommends "prompt action by the President and Congress to raise the cap on the Senior Executive Service, even if this means that their pay in some instances could exceed that being received by the political appointees above them." Let me now address how inadequate salaries for senior career officials is affecting our Nation's biomedical research efforts.

The National Institutes of Health is an agency of the Department of Health and Human Services. It is the Federal focal point for health research. Our mission is to discover new knowledge that will lead to better health for everyone. NIH works toward this mission by: conducting research in our laboratories; supporting the biomedical research of non-Federal scientists in universities, medical schools, hospitals, and research institutions throughout the country and abroad; assisting in the training of research investigators; and fostering and supporting the dissemination of biomedical and health information to scientists, physicians and other health professionals and to the public.

NIH has become the world's premier biomedical research institution because of the outstanding quality of its senior staff, who have made significant contributions to the major advances in the biomedical sciences, leading to improved methods for diagnosis, treatment and prevention of many human diseases. NIH research is the leading contributor to the new biotechnology. Within the last two decades, many of these advances have opened potentially valuable and lucrative commercial applications and have caused a dramatic increase in the competition for top caliber senior researchers and science managers in the private and academic sectors. Federal compensation for these employees has not kept pace with the increased competition. As a result, NIH has been experiencing problems recruiting and retaining senior level personnel of the prominence and stature required to lead and conduct national research programs into the causes and treatment of major human afflictions.

There are currently 174 highly qualified and talented members of the Senior Executive Service at NIH. Of these, 52 are physicians, and 103 have Ph.D. or other doctorates. Virtually all of these individuals can command substantially higher salaries in the private or academic sectors, and many have standing employment offers. All have been experiencing severe limitations in their salaries over the last several years and the lack of a pay raise has affected their morale.

Our studies show that on the average, NIH Senior Executive Service physicians are paid about one-half as much as their academic counterparts. Other NIH doctoral staff who belong to the Senior Executive Service are paid 19 percent less than comparable positions in research-intensive universities. Furthermore, the gap in compensation between the NIH and American medical schools is increasing. When I came to NIH in 1982, our medical officers who were in the SES were paid $39,000 less than their counterparts in American medical schools. Today that gap has widened to $99,000. Many of our senior scientists are considering whether to remain with NIH because of these salary disparities.

Our situation can best be illustrated by the results obtained from an informal survey NIH recently conducted of employment offers that have been made to our permanent scientific staff within the last two years. Of the senior physicians who responded to the survey, 83 percent reported receiving one or more offers ranging from $100,000 to $500,000. The average employment offer was $166,000, approximately twice what they are making at NIH. Among senior non-physician doctoral staff responding, 54 percent received employment offers of at least $10,000 more than their NIH salary. The average offer was $105,000, which is 50 percent higher than they are now earning. With offers of this magnitude, NIH can expect to lose a substantial number of key senior scientists and science administrators.

The compensation gap has also made recruitment exceptionally difficult. For example, since 1980 NIH has not been able to recruit a single research scientist into the Senior Executive Service from the private or academic sectors to engage in the independent conduct of a clinical or basic biomedical research program. In 1980, NIH had 108 Intramural researchers in the SES. Since then, we have had 59 vacancies, and have been able to fill only 29, all from within the Government. In addition, there are numerous cases of top candidates expressing substantial interest in senior positions at NIH who withdrew from consideration because we could not offer an adequate salary or benefits. Among these, a large number of prominent candidates for five different Institute Director positions declined further consideration because NIH could not match their current salaries and benefits. During this same period of time, over twenty prestigious senior scientists expressed interest in positions for which NIH was recruiting. All declined further consideration because they were currently earning salaries ranging from 20 to 263 percent more than NIH could pay.

During the last year, NIH has also attempted to recruit such senior staff as a pharmacologist to conduct AIDS-related drug analysis studies; a scientist to undertake research in nerve regeneration; a cancer radiation therapist; and several physicians in a variety of much needed surgical specialties, including general cancer, thoracic and neurosurgery. NIH was not successful in filling any of these positions owing to inadequate compensation. As a result, a number of promising basic and clinical research initiatives have not been pursued, and several other existing programs were curtailed.

Salary differentials with the private sector also affect our ability to retain senior staff. While many of them remain at NIH because of its fundamental mission and its unparalleled reputation for scientific excellence, recruiters from academia and industry make highly attractive offers to our senior staff that only too often are accepted.

In the last ten years, NIH has suffered a net loss of 28 percent of its research scientists in the Senior Executive Service. All left NIH to accept positions in academic institutions, industry, and independent research laboratories at salary increases ranging from 50 to 300 percent. In the last six years, NIH has lost a Deputy Director and five Institute Directors because of salary considerations. Recently, a number of prominent scientists have left NIH for salary reasons. These losses include one of the country's foremost experts in breast cancer, and the individual responsible for setting up a national network of cooperative clinical groups who conduct trials for testing and understanding new treatments for cancer on a national basis.

A recent independent study of the NIH intramural research programs conducted by the Institute of Medicine of the National Academy of Sciences confirms our findings. In this report, the Institute of Medicine states, "The reduction in the number of senior researchers, the increasing age of those remaining, the failure to successfully recruit from outside, and the evidence of generally noncompetitive salaries justifies NIH concerns about their future ability to recruit and retain senior researchers and research administrators. This is particularly serious since many of the current researchers are approaching retirement age."

One of the Institute's recommendations was that "Congress authorize NIH to develop and implement a personnel demonstration project tailored to overcome the deficiencies of the current system." The IOM suggested that the plan feature simplified hiring, classification, and pay administration, similar to the demonstration now being conducted by the National Institute of Standards and Technology. The Institute also recommended an occupation-specific pay standard, based on surveys of market comparability; the ability to exceed Federal pay caps; portable retirement systems to encourage non-Federal scientists to join NIH; and employment ceilings set by budget, rather than personnel ceilings.

The Department of Health and Human Services has developed a proposal, called the Senior Biomedical Research Service (SBRS), that is responsive to the IOM recommendations, and would help overcome recruitment and retention problems affecting senior scientists. The SBRS is an entirely new personnel system in the excepted service and would provide provisions for salaries based on market comparability, a portable retirement system, and other flexibilities which we find are necessary to better manage and motivate our scientific workforce. We are currently working with the Office of the Secretary to revise and update this proposal.

Equally important is the effect that the lack of a pay raise for senior scientists has had on our junior and mid-level scientists. NIH is relatively successful in recruiting and developing bright and promising post-doctoral research scientists. Our employment trends indicate that as these scientists progress and begin to encounter salary compression due to pay limitations in the senior ranks, they leave the Government just as they are entering the peak of their careers. NIH encourages this to some degree because it fosters cross-fertilization of ideas between NIH and the academic community, and allows NIH to bring in a new cadre of young bright people with fresh ideas. However, we expect that a continued limitation on the pay of senior level staff may accelerate these departures. If this occurs, NIH will have fewer well trained researchers available for advancement to senior leadership positions.

NIH offers advantages that for many researchers have offset the salary differentials. These include the intellectual stimulation and prestige of being a part of NIH, scientific freedom to choose their own research pursuits, access to state-of-the-art equipment, freedom from administrative and teaching responsibilities, opportunities for rewarding associations with outstanding scientists within many disciplines, and opportunities for consulting, although these are subject to restrictions. In the face of the widening salary gap, these advantages become less compelling.

Our recruitment and retention difficulties are occurring at a time of great challenge and opportunity in the biomedical sciences. If NIH is to meet this challenge, it is vital that we have a core of first-class senior researchers and science managers who will provide the necessary innovation and leadership. To do so, NIH must have the capacity to compete nationwide for the best available scientific talent. I firmly believe that an increase in compensation is one of the essential first steps toward restoring NIH to a fully competitive posture and demonstrating the commitment of the Federal Government to the retention of these valuable and highly qualified senior scientists.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you or other members of the Committee may have.

STATEMENT OF DR. JAMES B. WYNGAARDEN, DIRECTOR, NATIONAL INSTITUTES OF HEALTH

Dr. WYNGAARDEN. Mr. Chairman and members of the Committee, I appreciate the opportunity to address the Committee and present my views on the Report of the National Commission on the Public Service and I will focus, as Mr. McFee said, on those recommendations relating to recruitment and retention of senior career officials, and will discuss the impact these problems are having on the Nation's Federal biomedical research programs.

The Commission sounded an alarm that the uncompetitive salaries of members of the Senior Executive Service are undermining the Federal government's vital science programs. Their report warns that the failure to increase these salaries will substantially diminish our ability to recruit and retain the highest quality biomedical researchers, engineers, and other senior career executives who manage essential services in the Government. I would like to address how inadequate salaries for senior career officials is affecting our Nation's biomedical research efforts.

The National Institutes of Health is the Federal focal point for health research. Our mission is to discover new knowledge that will lead to better health for everyone. NIH works toward this mission by: conducting research in our intramural laboratories; supporting the biomedical research of non-Federal scientists in universities, and research institutions throughout the country and abroad; assisting in the training of research investigators; and fostering and supporting the dissemination of biomedical and health information.

NIH has become the world's premier biomedical research institution because of the outstanding quality of its senior staff, who have made significant contributions to the biomedical sciences, leading to improved methods for diagnosis, treatment, and prevention of many human diseases. NIH research is the leading contributor to the new biotechnology. Within the last two decades, many of these advances have opened potentially valuable and lucrative commercial applications and have caused a dramatic increase in the competition for top caliber senior researchers and science managers in the private and academic sectors. Federal compensation for these employees has not kept pace with the increased competition. As a result, NIH has been experiencing serious problems recruiting and retaining senior-level personnel of the prominence and stature required to lead and conduct national research programs into the causes and treatment of major human afflictions.

There are currently 174 highly qualified and talented members of the Senior Executive Service at NIH. Of these, 52 are physicians and 103 have Ph.D or other doctorate degrees. Virtually all of these individuals can command substantially higher salaries in the private and academic sectors and many have standing employment offers.

Our studies show that, on average, NIH Senior Executive Service positions are paid about one-half as much as their academic counterparts. Other NIH doctoral staff who belong to the Senior Executive Service are paid on average 19 percent less than comparable positions in research intensive universities.

Furthermore, the gap in compensation between the NIH and American medical schools is increasing. When I came to the NIH in 1982, our medical officers who were in the SES were paid $39,000 less than their counterparts in American medical schools. Today, that gap has widened to $99,000. Many of our senior scientists are considering whether to remain at NIH because of the salary disparities.

Our situation can best be illustrated by the results obtained from an informal survey NIH recently conducted of employment offers that have been made to our permanent scientific staff within the last two years. Of the senior physicians who responded to the survey, 83 percent reported receiving one or more offers ranging from $100,000 to $500,000. The average employment offer was $166,000, approximately twice what they are making at NIH.

Among senior nonphysician doctoral staff responding, 54 percent received employment offers of at least $10,000 more than their NIH salary. The average offer was $105,000, which is 50 percent higher than they are now earning. However, our best and most prominent scientists often receive offers of $140,000 or greater, which is about twice their top salaries at present. With offers of this magnitude NIH can expect to lose a substantial number of key senior scientists and science administrators.

The compensation gap has also made recruitment exceptionally difficult. For example, since 1980 NIH has not been able to recruit a single research scientist into the Senior Executive Service from the private or academic sectors to engage in the independent conduct of a clinical or basic biomedical research program.

In 1980, NIH had 108 intramural researchers in the SES. Since then, we have had 59 vacancies and have been able to fill only 29, all from within the Government. In addition, there are numerous cases of top candidates expressing substantial interest in senior positions at NIH who withdrew from consideration because we could not offer an adequate salary or benefits.

Salary differentials with the private sector also affect our ability to retain senior staff. While many of them remain at NIH because of its fundamental mission and its unparalleled reputation for scientific excellence, recruiters from academia and industry make highly attractive offers to our senior staff that only too often are accepted.

In the last 10 years, NIH has suffered a net loss of 28 percent of its research scientists in the Senior Executive Service. All left NIH to accept positions in academic institutions, industry, and independent research laboratories at salary increases ranging from 50 to 300 percent.

In the last six years, NIH has lost a deputy director and five institute directors because of salary considerations. Recently, a number of prominent scientists have left NIH for salary reasons. These losses include one of the country's foremost experts in breast cancer, and the individual responsible for setting up a national network of cooperative clinical groups who conduct trial for testing and understanding new treatments for cancer on a national basis.

A recent independent study of the NIH intramural research programs conducted by the Institute of Medicine of the National Academy of Sciences confirms our findings. In this report, the Institute of Medicine states: "The reduction in the number of senior researchers, the increasing age of those remaining, the failure to successfully recruit from outside, and the evidence of generally noncompetitive salaries justifies NIH concerns about their future ability to recruit and retain senior researchers and research administrators. This is particularly serious since many of the current researchers are approaching retirement age."

One of the Institute's recommendations was that "Congress authorize NIH to develop and implement a personnel demonstration project tailored to overcome the deficiencies of the current system". The IOM suggested that the plan feature simplified hiring, classification, and pay administration, similar to the demonstration now being conducted by the National Institute of Standards and Technology. The Institute also recommended: an occupation-specific pay standard, based on surveys of market comparability; the ability to exceed the Federal pay caps; portable retirement systems to encourage non-Federal scientists to join NIH; and employment ceilings set by budget rather than personnel ceilings.

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Equally important is the effect that the lack of a pay raise for senior scientists has had on our junior and mid-level scientists. NIH is relatively successful in recruiting and developing bright and promising post-doctoral research scientists, but as the scientists progress or begin to encounter salary compression due to pay limitations in the senior ranks, they leave the Government just as they are entering the peaks of their careers.

Our recruitment and retention difficulties are occurring at a time of great challenge and opportunity in the biomedical sciences. If NIH is to meet this challenge, it is vital that we have a core of first-class senior researchers and science managers who will provide the necessary innovation and leadership.

To do so, NIH must have the capacity to compete nationwide for the best available scientific talent. I firmly believe that an increase in compensation is one of the essential steps toward restoring NIH to a fully competitive posture and demonstrating the commitment of the Federal Government to the retention of these valuable and highly qualified senior scientists.

Mr. Chairman, this concludes my prepared statement and I will be pleased to answer any questions that you and the Committee might have. Thank you.

Mr. FORD. It may have been Yogi Bera, but somebody said that it looks like deja vu all over again.

As I was reading through your reasoning for a separate pay system it finally occurred to me that this Committee almost 25 years ago heard this same problem expressed to us. We developed a solution, and it has been working ever since.

We were having trouble getting American schoolteachers with experience to go overseas and teach in our Defense Department overseas schools. The schools are intended to approximate average American public school educational opportunities, so that dependants with parents serving outside of the country could be over there for a period of time and come back and resume their American education without a break.

We explored various ways to structure the pay for those overseas teachers. We placed them in the excepted service and instead of having their pay, as it had been, linked to GS schedules, the salaries are based on a determination made each year of what the average teacher salary with similar credentials is in the 100 largest school districts in the country.

An interesting aside is that we tried to get the teachers to use the District of Columbia teacher's pay as the standard and they were confident that the District of Columbia teachers would never, ever get a decent pay and so they turned that down. If they had accepted it they would now be among the highest paid teachers in the country.

But it is now just an automatic process, from the very beginning it instilled in those people some confidence that they were being compensated on a basis—other than an arbitrary government schedule—that bore some resemblance to what they were worth in their area of expertise.

The important impact of that—more than the fact that it tended over the years to keep their pay up with their profession—was it seems to me, was to give them a sense that the system was fair.

We are looking at two points that the Commission made about pay. One as Mr. McFee indicated, is the fact that we have a pay system that might have been relevant to the Federal work force 40 years ago but surely is not now. There were no research scientists at the NIH or rocket scientists at NASA 40 years ago. There are a whole lot of other things. There were no environmental specialists or even an EPA 40 years ago. It was a fairly simple world for Federal employment. The kinds of things people did in the Federal Government were fairly routine and easily understood, generally.

When I was in college over 30 years ago I took a course in public personnel management. The textbook really was a study of the Federal Civil Service System. I discovered something that stayed with me through all of my years on this Committee. What they used to do back in the '30's and '40's was boost the psychic value of a job by changing the job title.

By changing the title of a position they could move it into a different pay system. At some place—and I do not remember where it was—they were having trouble keeping elevator operators. This was in the days before the automatic elevators. They changed the title to vertical transportation specialist and were able to considerably increase the pay for elevator operator.

That system was so simple when you look back at it now that you could do little things like that and deal with the problem. I am told that in our veterans hospitals, if we did not run them in many states they would not be licensed under state regulations because of the woefully inadequate ratio of health care personnel to patients that we maintain in those hospitals. That is now true in my home area. Close to my Congressional District, which is part of the Detroit metropolitan area, there is a veterans administration hospital, and a hospital affiliated with the University of Michigan medical school which has one of the country's spinal-cord centers. It is my understanding that the public and private hospitals in the area pay so much more than the veterans hospital, that VA officials can only hope there are a few nurses around who, for whatever reason, think they might want to work for less money in the veterans hospital.

You go through category after category of people with special skills and find that by neglect we have allowed the system to continue for so long that there is no systematic, periodic upgrading of the kind of skills we need in the federal service.

We did not know a few years ago that we would need people who had expertise in a relatively new field, called environmental sciences. We did not know at the time of World War II that we would be doing some of the things we are doing in health and human services areas.

Yet very little is different in the way we establish and maintain the Federal pay system. It has been tinkered with a little bit over time, but no dramatic change has been made. The Volcker Commission may give us the opportunity to do something more than tinker.

I am informed by the staff that, to my pleasant surprise, the Office of Personnel Management has contracted for a private study on feasibility of locality pay—one of the recommendations of the Volcker Commission.

That surely is one of the factors of compensation for your people, doctor. Working where you are located necessitates living in one of the highest real estate markets in the country. It is a big jump to come from a nice college town in the Midwest to the Washington area and try to have the same kind of home you were occupying out there.

The other side of it is trying to find a more rational way in which we determine what kind of people we are competing for and what it takes to compete to get them. If a company like General Motors had saddled itself with the Federal pay system, they would have been out of business a long time ago. Instead, they decide what kind of people they need from time to time, then they go out and pay what has to be paid to get them. From time to time they adjust benefits, including pensions and other things, to keep those employees.

The Federal Government has never really tried to do this because we cannot break away from the assumption that government is a fairly constant type of activity. I do not suppose any of us like the fact that every time we pick up an article about the Congress it talks about how many more staffers we have than we had before.

I would like to ask you if any of you have seen this beautiful brochure, Career America. If you look at it, you will have to agree it is one of the nicest sales pieces that anybody has ever put together. It talks about the challenge of a career with America, an opportunity for excellence. It is as good as any Army recruiting brochure I have ever seen. It is designed to motivate young people to think about the Federal Government as a career.

A member of my staff is supposed to go out to the University of Michigan to explain to students there about careers in the Federal service. I do not know how many hundred students he is supposed to address out there, but we asked OPM to supply some copies of the brouchure. They were able to give us two copies of this brochure and explained to us that it is available at $7 a copy if we want to buy more.

Now, here we have an agency that finally did something good that would stack up against anything that the advertisers have been able to put together for the Army, and they are selling it for $7 a copy.

We have got to find out how this happens. Somebody over there has decided to make money on this thing instead of using it for the purpose for which it was designed. Have either of you been in any way informed that this kind of material was available for your recruiters to show people?

Mr. McFEE. I am very familiar with the document, and I agree with you, it is a very, very good job. I think you got a better rate than we got, so I am not going to comment. [Laughter.]

Mr. FORD. You have to buy them, too?

Mr. McFEE. I really do not know, Mr. Chairman.

Mr. FORD. We are going to look into that and see if we cannot get a little appropriation to buy some over there. This is one of those good news-bad news things. The staff shows me this and I say, "holy smokes, they are doing a better job than I thought." Then they tell me the bad news, that we have got this great piece, but few people will see it because it has a price tag on it.

Mr. McFee, how many of the senior executive positions are now vacant in HHS?

Mr. McFEE. I know the committee has been doing a survey or asking GAO to do a survey to try to determine how many vacancies exist throughout the government, and there seems to be a little confusion about a definition of what is a vacancy. And let me try and clarify that as it relates to our department. I have 17 pages here, which I would gladly leave for the record if you would like me to, of descriptions of 117 SES career-type vacancies.

Mr. FORD. Without objection, that submission will be inserted at this point in the record.

[The information follows:]

SES VACANCIES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AS OF 4/14/89

OFFICE OF THE SECRETARY

Immediate Office of the Secretary

Deputy Executive Secretary
to the Department
ES-0301/0131
SES GE

Office of the Assistant Secretary for Management and Budget

Deputy Assistant Secretary
for Information Resources
Management
ES-1515/0247
SES GE

Director
Office of Management and
Operations
ES-0301/0260
SES GE

Director
Division of Health Benefits
and Income Security
ES-0560/0039
SES GE

Office of the Assistant Secretary for Personnel Administration

Director of Policy
Coordination and Special
Initiatives
ES-0201/0186
SES GE

Director
Office of Human Relations
ES-0201/0200
SES CR

Office of the General Counsel

Deputy Associate General
Counsel for Disability
Litigation
Social Security Division
ES-0905/0156
SES GE

Deputy Associate General
Counsel
Legislation Division
ES-0905/0075
SES GE

SES VACANCIES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AS OF 4/14/89

OFFICE OF HUMAN DEVELOPMENT SERVICES

Deputy Commissioner
Administration on Aging
ES-0301/1002
SES GE

HEALTH CARE FINANCING ADMINISTRATION

Office of the Associate Administrator for Management and Support Services

Director
Office of Medicare Cost
Estimates
Office of the Actuary
ES-1510/2074
SES CR

Office of the Associate Administrator for Operations

Regional Administrator
Region I
ES-0340/2019
SES GE

Regional Administrator
Region X
ES-0340/2047
SES GE

PUBLIC HEALTH SERVICE

Office of the Assistant Secretary for Health

Director
Office of Minority Health
ES- /4059
SES GE

Director
National AIDS Program
Office
ES- /4056
SES GE

Vaccine Coordinator
ES- /4055
SES GE

Special Assistant for Science
ES-0601/4025
SES GE

PUBLIC HEALTH SERVICE (continued)

Office of the Assistant Secretary for Health (continued)

Director
Office of Personnel
Management
ES-0201/4013
SES CE

Regional Health Administrator
Region VII
ES-0685/4028
SES CE

Alcohol, Drug Abuse, and Mental Health Administration

(Office of the Administrator)

Associate Administrator
for Prevention
ES-0602/4276
SES CE

(National Institute on Alcohol Abuse and Alcoholism)

Director
Division of Basic
Extramural Research
ES-0601/4272
SES CR

Director
Division of Basic Research
ES- /4319
SES CR

(National Institute on Drug Abuse)

Chief
Clinical Pharmacology Research
Branch
Addiction Research Center
ES- /4318
SES CR

(National Institute of Mental Health)

Director
Office of Policy Analysis
and Coordination
ES-0602/4297
SES CE

SES VACANCIES IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AS OF 4/14/89

PUBLIC HEALTH SERVICE (continued)

Alcohol, Drug Abuse, and Mental Health Administration (continued)

(National Institute of Mental Health - continued)

Director
Division of Extramural
Activities
ES-0101/4302
SES CR

Chief
Theoretical Statistics and
Mathematics Branch
Division of Biometry and
Applied Sciences
ES-1520/4215
SES CR

Centers for Disease Control

Director
Division of Viral Diseases
Center for Infectious Diseases
ES-0403/4629
SES CR

Director
Epidemiology Program Office
ES- /4648
SES CR

Assistant Director for
Laboratory Science
Center for Infectious Diseases
ES-0403/4625
SES CR

Director
Division of Vector-Borne
Viral Disease
Center for Infectious Diseases
ES- /4647
SES CR

Food and Drug Administration

(Office of the Commissioner)

Director
Contaminants Policy Staff
ES-1320/5152
SES CR

PUBLIC HEALTH SERVICE (continued)

Food and Drug Administration (continued)

(Office of the Commissioner - continued)

Deputy Director
Office of Regional
Operations
ES-0696/5143
SES GE

(National Center for Toxicological Research)

Director
Division of Biochemical
Toxicology
ES- /5166
SES CR

(Center for Food Safety and Applied Nutrition)

Director
Center for Food Safety
and Applied Nutrition
ES-1301/5007
SES GE

Director
Office of Toxicological
Sciences
ES-0405/5110
SES CR

(Center for Drug Evaluation and Research)

Director
Division of Surgical-Dental
Drug Products
Office of Drug Evaluation I
ES-0602/5095
SES CR

Director
Division of Epidemiology
and Surveillance
Office of Epidemiology and
Biostatistics
ES-0602/5172
SES CR

Director
Office of Research Resources
ES- /5167
SES CR

PUBLIC HEALTH SERVICE (continued)

Food and Drug Administration (continued)

(Center for Drug Evaluation and Research - continued)

Director
Office of Management
Center for Drug Evaluation
and Research
ES- /5178
SES GE

Deputy Director
Office of Drug Evaluation II
ES- /5173
SES CR

Director
Division of Anti-Infective
Drug Products
Office of Drug Evaluation II
ES- /5023
SES CR

(Center for Biologics Evaluation and Research)

Director
Division of Bacterial Products
Office of Biologics Research
ES- /5151
SES CR

Director
Division of Cytokine Biology
Office of Biologics Research
ES- /5169
SES CR

Director
Division of Virology
Office of Biologics Research
ES- /5181
SES CR

Director
Office of Biological
Product Review
ES-0602/5175
SES CR

PUBLIC HEALTH SERVICE (continued)

Food and Drug Administration (continued)

(Center for Veterinary Medicine)

Deputy Director
Office of Surveillance
and Compliance
ES- /5180
SES CR

Deputy Director for Human
Food Safety and Consultative
Services
Office of New Animal Drug
Evaluation
ES- /5176
SES CR

Deputy Director for Therapeutic and Production Drug
Review
Office of New Animal Drug
Evaluation
ES- /5177
SES CR

Associate Director for
Scientific Information
and Education
ES-0701/5133
SES CR

Director
Division of Veterinary
Medical Research
Office of Science
ES-0701/5121
SES CR

Director
Division of Animal Feeds
Office of Surveillance
and Compliance
ES- /5145
SES CR

Director
Office of New Animal Drug
Evaluation
ES-0701/5070
SES CR

PUBLIC HEALTH SERVICE (continued)

Food and Drug Administration (continued)

(Center for Veterinary Medicine - continued)

Director
Division of Therapeutic Drugs for Non-Food Animals
Office of New Animal Drug Evaluation
ES-0701/5063
SES CR

Director
Division of Drugs Manufacturing and Controls
Office of New Animal Drug Evaluation
ES-0701/5116
SES CR

(Center for Devices and Radiological Health)

Director
Office of Management Services
ES- /5182
SES GE

Director
Office of Device Evaluation
ES-1310/5073
SES CR

Health Resources and Services Administration

Director
Division of Fiscal Services
Office of Operations and Management
Office of the Administrator
ES- /8038
SES GE

Indian Health Service

Associate Director for Health Program Research Development
ES- /8037
SES GE

PUBLIC HEALTH SERVICE (continued)

Indian Health Service (continued)

Director
Bemidji Area Indian Health
Service –
ES-0340/8034
SES GE

Director
Oklahoma Area Indian Health
Service
ES-0340/8040
SES GE

Associate Director for
Information Resources
Management
ES-0334/8036
SES GE

National Institutes of Health

(Office of the Director)

Director
Division of Financial
Management
Office of Administration
ES-0505/5409
SES CR

Senior Advisor to the Deputy
Director for Extramural
Research and Training
ES-0601/5716
SES CR

(National Heart, Lung, and Blood Institute)

Director
Division of Extramural Affairs
ES-0601/5708
SES CR

Director
Division of Intramural Research
ES- /
SES CR

Chief
Laboratory of Kidney and
Electrolyte Metabolism
Division of Intramural Research
ES- 75755
SES CR

PUBLIC HEALTH SERVICE (continued)

National Institutes of Health (continued)

(National Heart, Lung, and Blood Institute - continued)

Chief
Laboratory of Cellular
Metabolism
Division of Intramural Research
ES- /5736
SES CR

Associate Director
Cardiology Program
Division of Heart and
Vascular Diseases
ES- /5740
SES

(National Cancer Institute)

Deputy Director
National Cancer Institute
ES- /5497
SES GE

Associate Director for
International Affairs
ES- /5694
SES CR

Director
Division of Cancer Biology
and Diagnosis
ES- /5754
SES CR

Chief
Laboratory of Biochemistry
Intramural Research Program
Cancer Biology and Diagnosis
ES-1320/5605
SES CR

Chief
Laboratory of Immunobiology
Immunology Intramural Research
Program
Cancer Biology and Diagnosis
ES-1320/5701
SES CR

PUBLIC HEALTH SERVICE (continued)

National Institutes of Health (continued)

(National Cancer Institute - continued)

Chief
Developmental Genetics Section
Laboratory of Molecular
Biology
Intramural Research Program
Cancer Biology and Diagnosis
ES- /5753
SES CR

Associate Director for Chemical
and Physical Carcinogenesis
Chemical and Physical
Carcinogenesis Program
Division of Cancer Etiology
ES- /5671
SES CR

Deputy Director
Division of Extramural
Activities
ES-0601/5669
SES CR

Associate Director
Biological Response Modifiers
Program
Division of Cancer Treatment
ES-0602/5683
SES CR

(National Institute of Diabetes and Digestive and Kidney Diseases)

Senior Chemist
Endocrine Biochemistry Section
Clinical Endocrinology Branch
Division of Intramural Research
ES-1320/5567
SES CR

Chief
Section on Spectroscopy
and Structure
Laboratory of Chemical Physics
Division of Intramural Research
ES-1320/5561
SES CR

PUBLIC HEALTH SERVICE (continued)

National Institutes of Health (continued)

(National Institute of Diabetes and Digestive and Kidney Diseases - continued)

Clinical Director and Chief
Section on Kidney Diseases
Division on Intramural
Research
ES- /5748
SES CR

Chief
Metabolic Diseases Branch
Division of Intramural Research
ES- /5751
SES CR

Chief
Section on Carbohydrates
Laboratory of Chemistry
Division of Intramural Research
ES- /5750
SES CR

Chief
Section on Molecular Physics
Laboratory of Chemical Physics
Division of Intramural Research
ES- /5749
SES CR

Chief
Theoretical Molecular Biology
Section
Laboratory of Molecular
Biology
Division of Intramural Research
ES-1320/5578
SES CR

Chief
Section on Drug Design and
Synthesis
Laboratory of Neuroscience
Division of Intramural Research
ES- /5752
SES CR

(National Library of Medicine)

Associate Director for
Extramural Programs
ES-0601/5542
SES CR

PUBLIC HEALTH SERVICE (continued)

National Institutes of Health (continued)

(National Institute of Arthritis and Musculoskeletal and Skin Diseases)

Director
Extramural Program
ES-0602/5608
SES CR

(National Institute of Allergy and Infectious Diseases)

Director
Allergy Immunology and
Transplantation Program
ES-0602/5448
SES CR

Chief
Biological Resources
Branch
ES- /5747
SES CR

Chief
Laboratory of Infectious Diseases
Intramural Research Program
ES- /5760
SES CR

Chief
Laboratory of Biology of
Viruses
Intramural Research Program
ES-1320/5452
SES CR

Head
Lymphocyte Biology Section
Laboratory of Immunology
Intramural Research Program
ES- /5759
SES CR

(National Institute on Aging)

Chief
Laboratory of Molecular
Aging
Gerontology Research Center
ES-1320/5430
SES CR

PUBLIC HEALTH SERVICE (continued)

National Institutes of Health (continued)

(National Institute of Child Health and Human Development)

Chief
Section on Neuroendocrinology
Laboratory of Developmental
Neurobiology
Intramural Research Program
ES- /5742
SES CR

Chief
Laboratory of Neurochemistry and
Neuroimmunology
Intramural Research Program
ES-0413/5691
SES CR

(National Institute of Dental Research)

Director
Extramural Research Program
ES-0401/5642
SES CR

Chief
Laboratory of Developmental
Biology and Anomalies
Intramural Research Program
ES-1320/5462
SES CR

Director
Epidemiology and Oral
Disease Prevention Program
ES-0680/5686
SES CR

National Institute of Environmental Health Sciences

Deputy Director
National Institute of Environmental Health Sciences
ES-0602/5479
SES GE

Director
Division of Intramural Research
ES-1320/5585
SES CR

PUBLIC HEALTH SERVICE (continued)

National Institutes of Health-(continued)

National Institute of General Medical Sciences

Associate Director for
Program Activities
ES-0601/5538
SES CR

(National Institute on Deafness and Other Communications Disorders)

Director
National Institute on
Deafness and Other
Communications Disorders
ES- /5757
SES GE

(National Institute of Neurological and Communicative Disorders and Stroke)

Chief
Laboratory of Molecular
Genetics
Intramural Research Program
ES-1320/5636
SES CR

Chief
Neuronal Interactions Section
Laboratory of Neurophysiology
Intramural Research Program
ES-0602/5478
SES CR

Chief
Laboratory of Neuronal Growth
and Regeneration
Intramural Research Program
ES- /5743
SES CR

Chief
Neuroepidemiology Branch
Intramural Research Program
ES- /5744
SES CR

(National Eye Institute)

Deputy Associate Director
Biometry and Epidemiology
Program
ES-1530/5699
SES CR

PUBLIC HEALTH SERVICE (continued)

National Institutes of Health (continued)

(Clinical Center)

Associate Director for Nursing
ES- /5745
SES

(John E. Fogarty International Center)

Deputy Director
John E. Fogarty International Center
ES- /5746
SES

(Division of Research Resources)

Director
Division of Research Resources
ES-0601/5413
SES CR

SOCIAL SECURITY ADMINISTRATION

Office of Policy and External Affairs

Press Officer
ES-1035/6106
SES GE

Office of Programs

(Office of Hearings and Appeals)

Executive Director
Office of Appellate Operations
ES-0905/6188
SES GE

Office of Operations

(Office of the Associate Deputy Commissioner for Systems Support)

Deputy Associate Commissioner for Systems Integration
ES-0334/6107
SES GE

Deputy Associate Commissioner for Systems Requirements
ES-0105/6109
SES GE

SOCIAL SECURITY ADMINISTRATION (continued)

Office of Management

(Office of the Deputy Commissioner)

Director
Office of Civil Rights and
Equal Opportunity
ES-0160/6061
SES GE

(Office of Human Resources, Training and Management Analysis)

VACANT, Deputy Associate Commissioner
for Human Resources, Training
and Management Analysis
ES-0340/6185
SES GE

FAMILY SUPPORT ADMINISTRATION

(Office of Family Assistance)

Deputy Associate Commissioner
for Family Assistance
ES-0340/6033
SES GE

Director
Office of Policy and
Evaluation
ES-0101/6098
SES GE

Mr. McFEE. These are positions which either have been previously filled by SES career appointees, new positions for which merit recruitment is presently underway, or positions for which merit recruitment will occur shortly.

There are no political positions, or no positions here that would normally be filled by the political process. Out of those 117 positions, 97 of them are in the Public Health Service.

Now, let me clarify a little bit. If we had no recruitment problems at all, we could not fill all of these vacancies because our SES slot allocation which is assigned to us by the Office of Personnel Management is 600. Ten percent of those are held out for noncareer appointments, and of the remaining 540 slots, 516 are filled, leaving only 24 vacant slots for us to fill *within* our allocation ceiling.

And so if I were to answer the question that we only really have 24 vacant positions, you can see I would be masking considerably the need for these positions and the difficulty that we have in recruiting for them.

In fact, we have literally given up on filling some of the senior executive positions because we know in the past we have tried to find qualified applicants and have not been able to. And so, there are even more jobs, that are not on this list of 117, that we have given up on because we know we cannot actually get people to fill them. We have cancelled these jobs. We have reorganized and assigned the responsibilities to other people.

There are others which are not on this list which we have filed by the appointment of commissioned officers from our Public Health Service. You are probably aware of the fact that we have a separate system, pay and personnel system, the PHS commissioned corps, and these people have significantly greater pay and benefits than in the SES. The bottom line of this discussion of vacancies in our department was just given to you by Dr. Wyngaarden, and I quote: "When SES started ten years ago, NIH had 108 intramural researchers. Since that time, 59 vacancies have occurred, and we have only been able to fill 29 of them. Not one single one of the 29 came from outside of the government." In fact, we have appointed only 12 people from outside of the government out of 116 career appointments throughout the whole department that we have made in the last year.

And I think that last statistic, only 12 people from outside of government out of the 116 career appointments that we have made, kind of summarizes the problems of recruitment and vacancies.

Mr. FORD. Dr. Wyngaarden, on the same subject in your testimony you outlined a number of positions that you find impossible to fill. Then you made the very shocking statement that since 1980, NIH has not been able to recruit a single research scientist into the senior executive service from the private or academic sectors. You point out that out of 108 intramural researcher positions, you had 59 vacancies, and have been able to fill only 29 with people already in the government. You did not get anybody from the outside?

Dr. WYNGAARDEN. That is correct, Mr. Chairman, as a matter of fact. We have had no success since 1979 in recruiting outside of the government for the scientific positions. We have had some success for the executive positions, but your statement is correct with respect to scientists.

Mr. **Ford**. What do you do to make up for the gap? How do you function? Do you then go out and contract with research institutions to do the work that you would be doing in-house?

Dr. **Wyngaarden**. Well, first of all, we promote entirely from within. We have discovered that it is virtually the only avenue open to us. Unfortunately we have a pretty deep bench of young scientists coming along, but we have positions that we cannot recruit to, and I can cite a number of these.

For example, we were trying for a number of years to recruit a young or mid-career otolaryngologist to take care of patients with nose and throat problems, primarily. We have many patients who, because of their cancer treatment, have bleeding and so we need such physicians available.

We were unsuccessful for a number of years in recruiting such a physician to an intramural position. We solved that problem in a very expensive way—we contracted out for such a physician. We did secure a very able young-well-trained otolaryngologist, but we had to do it through a contract that cost us close to $200,000.

This individual is being paid about $100,000, while other people at his same level of training are paid in the middle thirties and are still in a training position. It is a very expensive way to do it, and I do think that a more flexible salary system would have enabled us to fill that position with a true employee.

Mr. **Ford**. As you may know, before Connie Horner became OPM Director, we had an OPM Director who suggested that the best place for the brightest of our people was in the private sector, that the government could muddle along and get by with mediocrity, because that is all you really needed to operate federal programs.

Unfortunately, that was a part of a great debate that went on here for almost four years between that person and people who did not agree with that view. But highly trained and skilled people like your people had to be reading and hearing about it in the media all the time. It certainly could not have been helpful to you in encouraging people to stay around and take these promotions.

From your own practical experience, would you share with us some of the real impacts that you see the personnel loss has had on the execution of the mission of the National Institutes of Health, some real instances of what is happening over there?

Dr. **Wyngaarden**. Well, you are quite correct in your first statement that the idea that we do not need the very best in these positions is very hard on the morale of the people who are talented individuals and contributing at their very best to do the job at hand. That sentiment has not helped in recruitment and we certainly do not subscribe to that in our case of an institution whose primary mission is medical research if we are to remain.

Mr. **Ford**. I hasten to add—and I said this this morning to another group—that I did not support the President in the election; I am from the other party. I have watched very carefully and I see no evidence of a continuation of that attitude in this administration.

I am optimistic we are not wasting our time here trying to accomplish some of these things that have been brushed off in the past. So, I think that you are here at a particularly opportune time with an administration that appears to me to be open-minded about wanting to make change, and perhaps we can get something done.

Dr. **Wyngaarden**. I think that is correct, and I sincerely hope that turns out to be the case.

Mr. **Ford**. But what happens over there to the mission that you lay out for yourself when you cannot fill these positions or cannot find a place to contract out?

Dr. **Wyngaarden**. We have a number of examples. This past year we lost Doctor Mark Lipman, who left us from the Cancer Institute to head a very large cancer program in the District at Georgetown University and took with him a substantial group of people. This left a tremendous hole in the Cancer Institute, and we have started to rebuild that unit. We have identified a younger scientist, physician-scientist to head it, but it will be some years before it is back to the original stature because we lost one of the outstanding people in the country in that field.

We have also lost the person, as I indicated, who has had a major role in conducting clinical trials in cancer, and we are also rebuilding in that area.

A year or so ago we lost Dr. Michael Zasloff, a physician-scientist in the Child Health Institute, who was attracted to the University of Pennsylvania at approximately double his salary. He is the young scientist who discovered the meganins. The meganins are a new class of chemicals found in frog skin. He was curious in his operations when he was doing some transplantation-type experiments. These frogs could be pitched back in the tank and never got infected in spite of the fact that the tank was teeming with bacteria and other organisms. And so, he began to extract material from the skin and discovered this new class of antibiotics which has enormous potential. We do not know where it will lead as yet, but it is a very exciting discovery, and it is being worked on around the country now, but not so much at NIH any more because we have lost the person who made the discovery.

We have been in danger of losing some of our top researchers for the last couple of years. I never know from one day to the next whether that will be the case. In fact, we have lost a very important molecular biologist in Dr. Gallo's laboratory, Dr. Flossie Longstal, who accepted a position in Los Angeles at one of the universities there, and this has been a great loss for us.

We do expect to lose a few. We always have, but we are losing our superstars. We are tending to lose scientists like Dr. Zasloff, who is in a stage of his career when normally that person would likely spend a much, much longer period with us. If we project this phenomenon out ten years we would run a substantial risk of declining into some level of mediocrity. To maintain the research position of the NIH, which is internationally renowned, we need to hold on to some of these experienced and excellent people and particularly the ones in the middle group of scientists who are just emerging as outstanding prospects.

Now, as soon as they reach that stage, either some university or some biotech firm begins to make them offers that are extremely difficult to refuse. Many of them will stay because of the enormous advantages of working at the NIH, but when they get to the stage of having to educate children, especially when they are going off to college, it becomes very difficult for us to hold them.

Mr. **Ford**. One assumes that a research scientist such as those that make up the bulk of your operation over there is already a kind of a special person. They have already turned away from being a society doctor in Hollywood or New York, and making an awful lot of money. They have something more on their mind than just making money. They want to make a contribution to mankind.

I am struck with the fact that as you recited these people leaving, unless I missed one, they all left to go either to public or private universities which are notoriously poor places to make money. You alluded to it, but one would assume that if you start with people who have already committed their life to the idea that they want to improve medical science, that being at the National Institutes of Health and the center of attention really of the whole world, that would be the big leagues for the person like that.

What you are suggesting to me is that they are choosing to go back to important work, but back to the minor leagues, so to speak. However, they can receive higher salaries there than with the Federal government, and they are at the stage where their kids are ready to go to college.

In addition to that, one of the things that I fight to protect here is the ability of the colleges and universities to give employees free tuition. It is a tremendous recruitment and retention tool that they have available, and I suspect that that may be a part of the equation. It is not more money in the pocket necessarily for that family, a bigger car and a bigger house. It is more assurance that they will be able to afford quality educational opportunity for their children.

You are not reciting to me people here who are leaving to go with big drug companies at outstanding salaries?

Dr. **Wyngaarden**. I just happened to choose examples of people who are going to universities, but we also lose them to the pharmaceutical companies. About seven years ago, we lost one of our key oncogene scientists to be a major research director at Merck; however, these scientists do continue their research at the pharmaceutical companies and universities.

And I think what you point out is correct. The kind of people we are talking about are not likely to go into practice on Park Avenue. That is not their motivation. But they can be attracted away to places where they can continue their research under conditions that are perhaps more flexible on the one hand and have considerably more income, and also tuition plans.

I did not want to leave the impression that they were leaving for minor league positions.

Mr. **Ford**. That was perhaps a bad analogy.

Dr. **Wyngaarden**. Some of them go to the University of Michigan. [Laughter.]

Mr. **Ford**. Since it is near my district, I would not want that impression at all. The university buildings are in Carl Pursell's district, but I have all of the faculty in mine. I have to be very careful.

Carl likes it that way since they tend to vote with my party more often than his.

Mrs. Morella.

Mrs. **Morella**. Thank you. That is a good note on which to chime in because I am so pleased Dr. Wyngaarden and Mr. McFee are here because as you probably know, Mr. Chairman, the National Institutes of Health are located in Maryland's Eighth Congressional District, and is of international prominence. I am so very proud of them and what they have been doing. We have been using you as our centerpiece in the plea for raising the cap on the salaries for those who are senior executive service-comparable and judicial. And indeed you cite the most emotional examples—people can identify with it.

Each day we are closer to a cure of cardiovascular diseases and cancer and AIDS and diabetes because of the work that is being done at NIH.

And so it is a real tragedy that you can cite a Dr. Mark Lipman, who is the one that you mentioned who went down to another university, and I think he brought 40 people, did he not, or something on that order?

Dr. **Wyngaarden**. Yes, it is on that order.

Mrs. **Morella**. And so, Mr. Chairman, I think these universities are paying substantially more—how much more are they paying, just as an example, maybe, percentagewise?

Dr. **Wyngaarden**. It ranges widely, but we have examples of people who have left us for packages that are in the $300,000-$400,000 range.

Mrs. **Morella**. And you are talking about research universities?

Dr. **Wyngaarden**. Yes, I am, research universities, major research institutions like the Sloane-Kettering Memorial Hospital in New York.

I am not suggesting that we should close that gap, and it will not take that kind of salary to hold the kind of people that we need to hold. We will always lose a few to such positions. But, I am contending that the gap at present is large and getting worse.

I indicated that in the case of the research physicians in the SES that the gap had increased from a $39,000 to $99,000 differential during the seven years I have been at the NIH. If one projects that out another seven years, the situation is going to be disastrous.

Mrs. **Morella**. It is comparable to, I guess, the value of the 1969 dollars from some of the figures that we have seen.

You mentioned a program that you seem to believe is in its initial stages. I wonder if you just might tell us a little bit more about that, the Senior Biomedical Research Service, because you seem to imply that it gives some flexibility.

Dr. **Wyngaarden**. Yes. Actually one of the first things that I learned on coming to the NIH in 1982 was that the medical school across the street from us, the Uniformed Services University of the Health Sciences, has a very flexible salary system. It was put into their bill, I think when David Packard was the chairman of the committee.

Their pay system permits them to pay up to the average of a comparable position in the five medical schools in the vicinity—three in Baltimore and two in Washington—such that they can pay a senior position in medicine or surgery up to that level which in many cases is twice our pay scale for comparable people. I thought if they are permitted to do that there, why not here?

I appointed a committee to study this matter and make recommendations, and the committee did so. This idea gathered some momentum and it had some supporters and some setback on the way, but about two years ago Mr. McFee and others in the Department really got behind this and started working on developing such a plan. Modifications were made to it, and it was given a considerable boost by the report of the committee on the Institute of Medicine.

It was discussed with key members of the Congress toward the end of the last session, and now it has been further modified with some changes in the proposal by Mr. McFee and the committee and the Department. I think it is being readied for resubmission. I think Mr. McFee could give us, perhaps, more precise information on just where that plan is.

But it would introduce a system of a base salary plus allowances for research and administrative responsibilities and accomplishments. It would also be market-based in its approach. Furthermore, it would alter the fringe benefits schedule and, in particular, enter into this plan, portable fringe benefit plans that would make it much easier for us to recruit from the university system. Someone could take the TIA/CREF program from the university and be at the NIH for five or ten years and move back to the university and all this would be integratable. And I would like to turn it over to Mr. McFee with your permission.

Mrs. **Morella**. I know Mr. McFee did also mention in his statement the benefit of the portable pension plan and cafeteria-style benefits.

Mr. **McFee**. I think Dr. Wyngaarden described the general outline of the plan, but let me give you some figures concerning salaries because I think you get a feel when you get down to some absolute real terms.

I was very glad to hear the Chairman mention the dependent school system pay system. I used to work in the Defense Department and know that system quite well, and you are right. It was one of the first market-driven systems that was allowed to creep into the federal system.

We are proposing that the pay package for a select few of the biomedical research scientists, about 750 now out of our almost double that, would be put into this new system, and the new system would be voluntary. The people would give up their civil service status to join it in return for some significant benefits.

It would be as Dr. Wyngaarden mentioned, a three-tiered pay system, a base pay that would parallel the pay of the SES being capped at the executive level salary. Then there would be two supplemental pays, one for your scientific expertise up to a number of thousands of dollars for the scientific skill that you bring to the position, and then an additional third tier on top of that, depending upon the scope of your administrative responsibilities, if you were an institute director, if you were the chief of clinical research or something like that, you could receive an additional bonus as a part of this pay package.

You take all three of these things together and add them up, and there would be some caps that it could not exceed. These caps would be market-driven by the American Association of Medical College Index on division directors or department heads. That index is one that has been in existence for 10 or 12 years. It has shown almost a 10 percent yearly growth, and it is always surprising to me as a professional personnelist that the mean right now of salaries is $193,000 a year.

We would obviously not use that as the cap. We are proposing now that for the majority of these people it would be 70 percent of that or $135,000, and 20 percent of the people could go to 80 percent at $154,000. And so you can see our proposals are modest in relationship to what the market is really driving out there.

We never expect to reach parity, but we do feel that this would provide us a very, very good chance of being able to attract and retain people, and then in addition to that, we would provide for a way for commissioned officers to convert and transfer into the system, and have a portable pension plan where these people would come to the government, and they could bring their private pension plan with them, and the government instead of contributing to FERS or to CRS could contribute to this private pension plan, and they could take it, obviously, back with them when they left.

If you look at the NIH as a campus, so to speak, and look at the fact that many people come for periods of time in their careers to do research and do move back and forth from the private sector, this new system would allow NIH to attract some people now who are in their mid-careers who could not afford to in any way move to NIH under the present system.

We are hoping that this package will solve the problem. Because this is a new legislative proposal, it will have to go through our internal executive branch clearance process, and it may be a little while before you all see it.

Mrs. Morella. Does it also reflect the locality? I mean, you say it is market-driven. I understand what you mean to a great degree, but might it also be of some grants going to another locality?

Mr. McFee. It does not. As to the reason for this, maybe I could comment a little bit on the locality pay issue. My experience in personnel management would lead me to believe that locality pay is more of a clerical, paraprofessional issue where the recruitment area is limited to a specific locality from which one competes.

Once you reach the professional level or the scientific level, you are using a national data base, and you are competing on a national scale, and locality pay probably is not as important a factor in being able to compete

And what you do to make up for the locality pay in the scientific area is you put it in the regular or supplemental pay.

Mr. Ford. If I could just expand on that, it sounds to me like you have got this thing pretty well scoped out in your mind. However, if you reduce it to writing and say you wanted to send it up here as a legislative proposal, it will still be getting through OMB two years from now.

I wish there was a way, and maybe you can work with us, for us to steal what is in your head without turning it into an official request. We have asked our friends at GAO and others to find examples like this of things that can be done because no one who gets very deeply into this believes that there is one system of alternative pay that will work for all of the areas of concern that we have.

We have some area pay now. We pay several hundred thousand blue collar federal employees on the basis of the area that they are in, and what the competition is for their skills. It is not new. We have been doing it for many, many years. We have other places in the government where we develop data that would be available to us for administering laws such as the Davis-Bacon Act and the Service Contract Act.

Finding this kind of information is not new. But what you seem to be outlining here is an approach that has a peculiar application very specific to the NIH that we ought to be looking at as a possibility.

You know special pay system at China Lake worked because it is tailored to the workforce and requirements; China Lake, it is the nature of the place it is in. Every once in a while we have somebody who dusts off China Lake and says wow, they had an experiment out there and it worked.

I learned a lot about China Lake because it is one of the biggest federal impact aid school districts that we have in the country. It sits out there all by itself, and it is able to function almost in a vacuum.

It is hard to take the China Lake experience and move it into the Washington metropolitan area and have the same circumstances obtained. It is very clear that what we were hearing this morning about what bothers NASA regarding area pay, the concept. They told us that most of the people they have been able to transfer into headquarters here have come from as far away as the Goddard Spaceflight Center in nearby Maryland. But when they try to get somebody to come from Huntsville or Houston, the response is, "thanks, but no thanks. We are not going up there to buy a house in Washington."

I hope there is some way that our staff and your people could get together and let us steal your ideas to help us develop what may have to be a very complex approach to pay schedules.

Mr. McFee. Mr. Chairman, I can assure you that your staff knows how to request technical assistance, and it will be available.

Mrs. Morella. The idea came, as I recall, from Dr. Wyngaarden's testimony. Came from what NHST was doing in terms of giving them some flexibility in terms of salary.

Dr. Wyngaarden. That is where it started, yes.

Mr. Ford. I know that your new Under Secretary is an advocate for these experimental approaches. I hope that she is going to become involved.

Mr. McFee. She is already very much involved.

Dr. Wyngaarden. Mr. Chairman, I might add that although this plan originated from the NIH, it has grown to encompass similar scientists and administrators and other agencies of the Public Health Service such as ADAMHA and FDA and CDC, and so it would be broader than just the National Institutes of Health if it is approved.

Mrs. Morella. Mr. Chairman, could I ask just a couple of other questions?

Mr. **Ford**. Sure.

Mrs. **Morella**. Have you ever had scientists who have left NIH and then NIH had to contract them back and ultimately when you contract out, you have—if you could put a dollar sign on the practice actually ended up spending more money, other examples of that?

Dr. **Wyngaarden**. Numerous examples, Mrs. Morella. In fact, we did exactly that with the diagnostic radiology group. We got to the point where we could not recruit into that group, and those who were at the NIH were planning to leave. So we contracted with one of the local medical schools to provide the radiological, diagnostic radiological services at the NIH. In turn, they hired these same people back, so they never moved. They are doing just what they did before the administrative transition, and now they are being paid about twice as much, and we are paying three times as much for the same services.

Mrs. **Morella**. Mr. Chairman, did you hear that? Is that not shocking?

Mr. **Ford**. Yes. I have run into that actually with a former colleague of ours who was a consultant first as an NIH man and then later in the hospital.

Mrs. **Morella**. Also, these universities that apparently have had more funding for the scientists and researchers are many of them receiving federal funds so that in the long run we obtain them to take our people from the institutes.

Dr. **Wyngaarden**. Yes. That is common. It would not apply to those who go to industry except in a rare instance. But for those who go to academic locations, they promptly turn around and file applications with us to support their research. And many times that includes a fraction of their salary proportionate to the amount of time on that research project.

Mrs. **Morella**. I find that incredible. I also found another point in your testimony where you said on page 5, "As a result, a number of promising basic and clinical research initiatives have not been pursued and several other existing programs were curtailed."

Is anyone in the private sector picking up on that or do we really have a vacuum nationally in promising and basic clinical areas you are referring to?

Dr. **Wyngaarden**. That is a very good point because one might say does it matter whether this sort of work is done at the NIH or the University of Pennsylvania, and for certain kinds of work, that might be the case.

On the other hand, we have certain programs and frequently an institute will have in its total portfolio certain things it does intramurally at the NIH and certain things it does through the grants and contracts road. The Cancer Institute is one of the best examples of that. We have certain areas of cancer in which we are not doing very much at the NIH because we cannot do everything, and those are supported by programs or centers outside.

By contrast, we have certain areas which we have had for years, special expertise. One of those has been in the area of lymphomas, the Hodgkins and non-Hodgkins type diseases. In fact, the contributions to programs are disproportionately from the intramural NIH program. In fact, that is where Dr. DeVita, for example, made his great reputation.

Breast cancer happens to be another one in which the NIH is particularly situated to conduct a very large, expensive program that is much harder to do outside unless one has the kind of endowment that created this competing unit in Washington. Now, our program in that area is really severely curtailed until we can build back to strength.

Mrs. **Morella**. Mr. McFee, you had some comments from the Volcker report with regard to enriching the youth in service or enriching the pool of applicants, and you commented on the number of interns that NIH will be taking on and has taken on in the last years—I think you said 93 since 1986 and 16 more in 1989 in the management intern program. It was interesting.

In this morning's hearing we heard from the Government Accounting Office, and one of the things they commented on is that their presidential management intern program did not give the substantive kinds of experiences to these young people. Therefore, they did not really entice them or engage them in public service, but rather might well have turned them off. And I just point that out to you to ask you if in terms of checking what they do, if there is some control. This might not have been at NIH, of course, but I just wondered whether or not you do have people who look into that to make sure that the experience they have truly is one that makes them want to be involved in public service.

Mr. **McFee**. I can assure you that those figures, by the way, are not just NIH. They are department-wide. We have been very pleased with the presidential management intern program. In fact, during the last decade where hiring has been very difficult at the entry level, they have become almost the sole source of new blood within the department.

We have a very, very good program with these interns with rotational assignments.

Many of them have an assignment on the Hill, and you may well have had some of them on your staff, and they have a well rounded kind of experience in a number of areas before they reach what is their target job.

We have lost a few. Some have moved to other agencies, but we have a very, very good track record, I think. One of my current special assistants, who I hired almost 10 years ago as a presidential management intern, is soon to move into a major managerial job in the department.

Mrs. **Morella**. Also when you talk about doing something with regard to sending people out to recruit, you are in the best position to do that because there are just so many different professions that are involved with the medical field, biomedical, et cetera. We are in a perfect area for sending out your people where you can to do the recruiting, you could do a superlative job.

I am pleased that you mentioned that because I just think that people are ready to catch on and take hold. If we can do something on the other end with regard to salaries. And I just wanted to ask you finally, is there anything you want to tell us that we have not asked you or that has not come through in your testimony?

We know about the diversity in terms of the great gap with the salaries with universities and academic centers. We know what the solution to that is. We know about some of the senior researchers who have left. Is there anything else you want to tell us?

Dr. WYNGAARDEN. Mr. McFee has one point to make, and I have one.

Mr. McFEE. From a historical perspective, I have spent a lot of time in this room with various chairmen of this committee, not the least of which was 10 years ago during the civil service reform under former chairman Hanley.

Prior to the establishment of SES, there were a number of excepted authorities in the federal government at the supergrade level. NASA and our own department had these. Most of them had been established by the authorizing committees, and NIH had a special excepted service in which they could bypass most of the more rigid rules and regulations.

NASA had a very, very good one, also, with a large number, I think, almost 300 or 400 people in that excepted service. When the Civil Service Reform Act came along and SES was set up, it abolished most all of these excepted service authorities, and they were all put under SES.

Here I can tell you that in retrospect, I was one of the people that felt that was the way to go, and I can just tell you I am here today repenting. It was a terrible mistake, and we need to go back to some of these special services.

The SES cannot be the answer to everyone's problems, and our experience with it is that there are many aspects of it like in qualifications reviews, that are just not applicable to something like the senior scientific service.

The whole idea of a performance management plan, where you set one-year objectives, is absolutely ludicrous when you apply it to the NIH scientific area.

In discussing this with Chairman Glenn in the other body, I reminded him of the fact that he would never have gone into orbit if they had not had the excepted service at NASA and that if he had come 10 years later, when there was not that excepted service, he would not have made it.

I urge you that when these issues come up, and I think they are going to come up because of the fate of the quad com across the board raises for everyone. I think the answer is going to be a lot of proposals for special pay programs, and I personally urge you to look sympathetically on those proposals.

Mrs. MORELLA. One thing I forgot to mention, Mr. Chairman, and you brought it to mind. You know, the President has kept hands-off a little bit, and, as Chairman Ford said, he has been working on trying to get him involved. And I have and others have, too.

But in his 25 percent for the judicial branch and then an increase for other critical areas, you certainly will have a lot of people who will be in the critical areas. I mean, I would support anything that came along for any kind of enhancement in terms of salary for any group.

However, I have made the comment that I felt to exclude some of the top officials in other agencies was going to be debilitating to the morale. And I am just curious, since you may be the prime recipients, if something like that is done, how do you feel about that selectivity?

Mr. **McFee**. Well, I think I can say, without any fear of giving you some wrong advice, that I think it is going to be very difficult to decide who it is that is going to be covered. I fear that the solution will be some authority to allow only so many people to get raises, and then that authority will be vested in OPM or some other agency outside of the organizations that would benefit from the raises.

If they cannot come up with some better definition of who gets the raises and how much, I would hope that some legislation could be passed where decision authority would be given to the major department heads. Because, like you, I fear that the decision maker will be so far from the problems and outside the organization that it is going to be very, very difficult to manage fairly.

I presently do not believe the administration knows what they're going to do in that area. If they are, it is an awfully good secret, or a well-kept secret.

Dr. **Wyngaarden**. Mrs. Morella, in response to your question, there is one more piece of information I would like to get on the record. We are faced, at the NIH, with a substantial retirement prospect in the next five years; 62 percent of our SES members are eligible for retirement during the next five years. In the scientific component, it is 77 percent; in the executive component, it is 50 percent. But the overall average is 62 percent, but, particularly in the scientific service, that is a staggering potential retirement.

And I think it just underscores the urgency that we attach to this problem.

Mrs. **Morella**. Thank you very much for your excellent testimony and responses. And thank you, Mr. Chairman, for giving me so much time.

Mr. **Ford**. Among the suggestions of the Volcker Commission and others, going way back into the '40s, have been proposals to limit the number of presidential appointees, and to increase the number of career appointees, particularly at the assistant secretary level. As long as I have been here it has been raised one way or another over and over again.

The Volcker Commission has brought it up and some people are confused and think they are referring to how many people are working at the White House. For many of us, it is more "how many people are coming and going through a very fast revolving door in management positions, in agencies that we have to deal with."

Mr. McFee, you are kind of a rare bird. You are one of the three remaining career assistant secretaries across all the agencies in government, having served in your present position for 12 years, as you mentioned in your testimony, and, given the steady decline of your breed, down to three of you as survivors, would you care to comment on the Commission's more specific recommendation, the Volcker Commission, to increase the number of career sub-Cabinet appointees and, particularly, responsible people who are responsible for agency administration.

And in that vein, do you feel that a set number or percentage of sub-Cabinet positions should be set aside as career-reserved, as in the case of senior executive service now?

Mr. **McFee**. Well, let me go back to the late '40s, where the Hoover Commission was one of the first government groups that made a suggestion that there be some continuity. I believe their suggestion was based upon continuity and to allow each major Cabinet department to have one of its assistant secretaries, who was responsible for the management and administrative systems, to be from the career service.

Then, following that period of time, I believe there was a maximum of eight of the Cabinet departments that did have career assistant secretaries established. The position was established by statute in our department at the time the department was established or soon thereafter. The law required that the assistant secretary for administration be filled from the career service. That is still in the statute and has never been repealed.

When the Civil Service Reform Act was passed 10 years ago, there was a provision that any of these jobs that was required to be in the career service on the day before the enactment of the Act would be automatically made a career reserved job.

And that is what happened to the position that I am in today. It is designated as a career reserved job, which does not mean that Tom McFee gets to have it forever, but means that it has be filled through the competitive process out of the career service.

As to the status of those eight jobs, you are correct. I am one of three that remain. The assistant secretary of transportation, the assistant attorney general for administration, and my position are the only ones that have remained in the career service.

From time to time there is some piece of legislation that chips away at this. The most recent one was the assistant secretary of labor which, last year, was converted to a presidential appointment with Senate confirmation.

My personal view is that the idea of the Hoover Commission is still valid and I believe the Volcker Commission and the National Academy of Public Administration have made further recommendations that this erosion not continue. In fact, the Academy's recommendations are that we go back and reconvert some of these jobs to the career service.

Now, I hope this does not sound like a self-serving statement on my part, but it is one that is based upon long experience in government where I have worked for a great number of secretaries in our department—12 to be exact, six of them as an assistant secretary. And I know the advantage that I can bring to a new secretary during the transition by being able to explain what is going on and help keep the machinery running until the new team is in.

In contrast, my counterpart, the assistant secretary for management and budget, which is a political position, has been filed by seven people since I was appointed to my job.

There are many initiatives, there are many things that have to be done in government that cannot be done in the tenure of two to three years, which is the average of a political appointment. Major redesigns of computer systems, major design of financial management systems, these things take time, and I have been able to be effective, I think, in being able to keep my tenure in order to get some of these things done.

I also do not have the learning curve that is required by someone new coming in, learning a very complex system. I can be responsive by modifying Department processes and systems for a new team.

Now, in summary, I realize that having a political appointee requiring Senate confirmation does not mean that a career person could not get that job. It just does not happen that way very frequently, and the career reserved designation is an assurance that that will happen. So this is, I think, a very important issue and it is one that I would hope that the committee would look at seriously in the future.

Mr. FORD. I appreciate that very much, particularly since I tend to agree with it. I was part of the committee that took the "E" out of HEW. I spent my whole career on the Education and Labor Committee dealing with the education administrators when they were part of the Bureau of Education. As a matter of fact, Mr. Reagan's first secretary of education, Ted Bell, was in the bureau at HEW.

Mr. MCFEE. Twice.

Mr. FORD. Yes, he was the assistant for education and then Jerry Ford, I think, made him the director, didn't he? He was in the Nixon Ford Administrations. He was well-known to us. If you read his book, it really lays out the problem. His book is a real cry of frustration that, having been working with these programs from their earliest days, he was back as the Secretary, and had a staff of political appointees with less institutional memory around him than he had when he was in the old bureau.

When education handled it was at the bureau level, there were not a lot of political appointees involved. The staff was all professionals who spent a good many years before they got promoted, and they knew the substance of the programs they were working with better than anybody around.

Unfortunately, it is not unusual now for us to have appointees come to the committee who really have to turn around to some civil servant sitting in the front row and ask him what we are talking about when we ask a question about a program that they are administering. We have gone overboard somewhat.

That is not to say that you do not get any good people, but you cannot take a pill and get experience. If, as I have, you work with programs such as the Higher Education Act which came out of my other Committee in 1965, the turnover gets to be very frustrating. I chaired the education subcommittee during the last two five-year authorizations. The last time we did the reauthorization, for 11 months out of the two-year cycle, there was no assistant secretary for higher education. There was nowhere for the Republican members of my subcommittee to make contact with the administration to ask for any input from that department on decisions we were making.

The end result was that the department really was sort of a spectator in the whole process. It was very unlike the way it worked when it was just a bureau, when you had, if you will, career bureaucrats coming over whose experience enabled them to have a very strong impact on the policy-making that the committee was engaged in.

That gets lost when you have new people. And maybe they have an agenda that they bring with them that gets in the way of learning as fast as they might. It appears to me that that is the kind of thing that the Volcker Commission is talking about. I have great expectations for improvement over there, but it is almost like a new department again. Every time you turn around, you're dealing with new people.

Our staff experiences difficulties in getting good information because they don't have long-time relationships with people that are at the policy-making level over there anymore. I don't think that that works out too well. Incidentally, the pay issue is very much a part of why we didn't have an assistant secretary for higher education.

We had three small college presidents come to town and we would hear the word that, this week, Dr. So-and-So will be announced as the new assistant secretary. Dr. So-and-So's wife would go out with the real estate man one day, then the candidate would call up and say, "Thanks, but no thanks, I am going back to my small college town." We had three of them during that time who came, and the inside word was, "This is the definitive appointment," and each one of them opted out as soon as they discovered the cost of housing and other expenses in this area.

Whether it is a question of politics or not, the fact is that trying to recruit people directly into a position like that is even more difficult with the pay conditions and the other conditions that you have to deal with, than it is with somebody who has already made the adjustment to a career in government.

And I am hopeful that we can approach some change in this regard, such as establishing a clear reservation of some of these positions for career people without having it being interpreted as a raid on the President's political prerogatives. We do not want to get into that with this President who, so far as this chairman is concerned, has been a great relief to deal with.

We are further along already this year in resolving employee issues with this Office of Management and Budget, than what we could accomplish with the previous administration in the previous eight years. It is just a great relief to be able to talk to people who are not coming at us with a loaded, double-barrelled shotgun aimed at federal employees. A good deal of what had federal employees upset at the beginning of the year is already behind us, without any big fights or any public confrontations, just by people working it out.

And so I am not trying to find a way to spoil this by having the press say that we are going to pick on the President to reduce his political appointees. But I think we have to examine the possibility, and not let this thing get too far away from what the career service was intended to produce.

Mr. McFEE. Mr. Chairman, I would urge you to go back and read my testimony on that issue of political versus career. I do not think it is the number of appointees; it is where these appointees are placed, and that is why assistant secretaries and other jobs in the purely management and organizational areas, I think, are the appropriate places for the career leadership.

I would, on the other hand, tell you that in the program areas, I think it is vital that the President's people come in, new blood, to provide leadership for his programs. So it is the position you put them in and not the numbers of them that you have. And I believe if you want to take on this issue, you ought to approach it that way and be more specific about where they are used and not how many.

Mr. FORD. Thank you both very much. Your testimony will be very helpful and we intend to be quoting both of you extensively as these hearings go forward. I appreciate your cooperation. I look forward to having our staff working with you, Mr. McFee, over the next few weeks.

[Whereupon, at 4:00 p.m., the committee adjourned subject to the call of the Chair.]

[The following response to written questions was received for the record:]

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

JUN 21 1989

Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As requested in your May 2 letter, enclosed are my responses to your additional questions regarding the Report of the National Commission on the Public Service.

I look forward to providing you any further assistance you may need in the review and analysis of the Commission's recommendations, and want to thank you for the opportunity to testify.

Sincerely yours,

Thomas S. McFee
Assistant Secretary for
Personnel Administration

Enclosures

1. In urging that civil service pay be given a higher budget priority, the Volcker Commission also suggested that "a substantial portion of the costs [of pay raises] can be absorbed through existing personnel accounts (whether through reductions in employment or the elimination of programs that no longer serve essential public needs)."

Given recent budget mandates that agencies absorb greater and greater portions of even modest comparability pay adjustments, could you comment on the practical impact of this recommendation of pay absorption?

In my personal opinion, the Commission is somewhat naive in its assumption that the substantial sums of money that would be involved in any meaningful reform of the Federal pay system could all simply be absorbed through existing accounts. Historically, the accounts that have been "squeezed" to accomodate even nominal comparability raises have been the very ones that would support some of the Commission's recommendations -- for instance, to increase and improve training and expand the recruiting function.

Nevertheless, pay absorption is one of the options that should continue to be explored. In the aggregate, agencies do experience peroductivity growth which is measurable and tangible, leading to lower workforce requirements. This is a primary avenue for achieving savings through absorption. It is directly comparable to private sector corporations, where labor cost increases become difficult for a firm only when wage increases over time frequently exceed productivity growth.

Another avenue for absorption mentioned by the Volcker Commission is through "elimination of programs that no longer serve essential public needs." Although sounding harsh, this is essentially good management and good government. Over time the needs of the public change, and Federal programs should change to meet those needs. Where programs no longer serve a useful or productive purpose, they should be reduced or eliminated to allow for the best use of public resources. In essence, managers must set their priorities and align their resources to meet them.

2. The Civil Service Reform Act grants broad demonstration authority but restricts demonstration projects to exclude benefits (i.e., sick leave and annual leave).

Do you see any benefit in broadening the authority to soften those restrictions to allow some experimentation in benefits accruing to employment?

As stated in my testimony, I think there is a real need for benefits as well as pay reform if the government is to successfully compete for and retain top-notch talent. In my view a good way to test alternatives would be to expand the CSRA demonstration authority to allow experimentation in the benefits area. Any such expansion should include as full a range of benefits as practicable -- leave, retirement, health insurance, etc. As I pointed out, a survey of the Department's employees a couple of years ago showed that a quarter of the respondents would consider leaving government because of the inflexibilities in the current benefits systems.

In my own view, overhauling the entire Federal benefits system would take years, and I don't think we can afford to wait that long. I would hope, at least, for the demonstration authority to be expanded in the near future.

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

TUESDAY, MAY 2, 1989

U.S. House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC.

The committee met, pursuant to recess, at 10:20 a.m., in room 311, Cannon House Office Building, Hon. William D. Ford (chairman of the committee) presiding.

Mr. **Ford**. Ladies and gentlemen, this is our third day of hearings on the report of the National Commission on the Public Service.

First we will receive testimony from people who devote their energies to studying the workings of the public sector. They play a crucial role in assisting and advising where appropriate.

Then we will hear from current and former Federal managers, the key people who interpret and implement national policy.

During the last two Administrations I was deeply disappointed and frustrated to witness the degree to which Federal managers—and, indeed, the entire Federal work force—were maligned, distrusted, and discounted. The result of that disdain and neglect is a Federal service that is limping along. Top people are leaving. Many critical positions remain unfilled. Programs are lagging. Services are less than what they should be.

We cannot afford to allow this situation to continue. The National Commission on the Public Service has done an outstanding job in dramatizing the degree to which the Federal service has been damaged by the neglect and unfounded attacks on the integrity of Federal workers and the important services they render. The Commission has challenged us with their recommendations for rebuilding the public service.

Our mission is a formidable one. We must find ways to rejuvenate the service—repair the damage, restore the sense of worth, reinstitute public faith in our nation's most important resource, its public employees.

Mr. Gilman would like to make a statement.

Mr. **Gilman**. Thank you, Mr. Chairman.

I welcome the opportunity to join you and our colleagues once again as we explore further the report of the National Commission on Public Service.

Our earlier hearings did focus on a number of important concerns facing the Federal work force. We have heard a number of thoughtful proposals to date to rectify some of the more longstanding problems, and I am hopeful that our continuing review will provide us with some additional insight and some recommendations that we can make to the full body.

I want to welcome today's witnesses. We look forward to their comments and suggestions.

Thank you, Mr. Chairman.

Mr. **Ford**. Thank you.

Ms. Morella?

Ms. **Morella**. Mr. Chairman, I just want to thank you again for continuing a series of meetings on the Volcker Commission Report on Public Service.

I look forward to hearing our panelists today, many of whom I know and have worked with, and picking up on the concept that we have had from Mr. Volcker and representatives of the Commission before us, that we have had the former administrator and representatives from NASA before us, that we have had the administrator of the National Institutes of Health and others representing scientific research before us, and so I look forward to having this complement what we have heard in terms of public testimony from those who know about the merits of the Volcker Commission Report and the need to push forward with it.

I thank you for having this hearing again, Mr. Chairman.

Mr. **Ford**. Thank you.

First we will hear from Mr. Ray Kline, president, and Mr. James E. Colvard, chair, of the Standing Panel on the Public Service of the National Academy of Public Administration.

Without objection, the prepared statements of the witnesses will be inserted in the record immediately preceding the point where they begin their comments.

You gentlemen may proceed to summarize, add to, or highlight your statements in any way that you think will be most illuminating to this record.

[The prepared statement of Mr. Kline follows:]

NAPA
National Academy of Public Administration
Chartered by Congress

STATEMENT OF

RAY KLINE, PRESIDENT

AND

JAMES E. COLVARD, CHAIR
STANDING PANEL ON THE PUBLIC SERVICE

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

BEFORE THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

HOUSE OF REPRESENTATIVES

ON RECOMMENDATIONS OF

THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

May 2, 1989

1120 G Street, N.W., Suite 540 Washington, D.C. 20005-3801 (202) 347-3190

Mr. Chairman and Members of the Subcommittee:

We are pleased to have the opportunity to provide the National Academy of Public Administration's views on the status and future of the public service, and we congratulate the Chairman and this committee for their leadership in pursuing this matter. This is a matter of longstanding concern to the Academy's 400 Fellows, most of whom have held senior positions in federal, state or local government. The role of the Academy's Standing Panel on the Public Service is to continuously monitor public service issues and offer advice and assistance to the Nation's leaders.

We believe that **Leadership for America: Rebuilding the Public Service**, the report of the National Commission on the Public Service, is an important contribution to public service improvement and trust that it will serve as a catalyst to strengthen government performance by addressing the needs of government's most important resource -- the people who conduct its affairs. We commend the distinguished Americans who served on this commission. They represent a broad range of political views and professional experience. What they have stated in common is recognition of the fact that the Nation can no longer ignore the steady erosion of its capacity to govern.

The Challenge of Demographic Change

The work of the Commission is particularly timely because the changing demographics of the U.S. workforce will make it increasingly challenging for public officials at all levels of government to maintain and enhance the quality of the public sector workforce. Moderate growth projections call for those entering the U.S. labor force to expand by roughly 18 percent between 1986 and 2000; this compares to 35 percent growth for the previous 14 years. The labor force will become more diverse as large proportions of new entrants will be women, immigrants, and members of minority groups; only 15 percent of net new entrants will be white men. The decline in the availability of new workers will first be felt by organizations who rely on younger workers. It is no coincidence that 1988 marked the first year since the all-volunteer military began that the Army did not meet its recruiting goals.

There is evidence that the American education system is failing short in preparing students to meet tomorrow's needs. While there is a complex range of issues at work here, the crux of the matter, from a public workforce standpoint, is that tomorrow's government will have to provide more basic skills training to many of its new employees and to retrain many employees for new lines of work. As the Hudson Institute's **Civil Service 2000** report indicated, the skills required of federal workers today are greater, on average, than those of employees in the nation as a whole. For example, 16 percent of federal employees require top-level language skills, whereas less than five percent of the overall U.S. jobs require these skills.

But federal jobs are continuing to shift toward higher skills at a rapid rate, and tomorrow's federal workforce will continue to become more professional. Despite the projected slow growth of federal employment, federal employers, like those in the private economy, will be hungry for skilled talent in the 1990s and the competition will be fierce. As taxpayers, we will have to recognize that government must have a highly skilled workforce to handle the government's responsibilities in such complex areas as medical research, weapon systems development, environmental protection and the war on narcotics. Government will have to be able to compete for the best and the brightest.

Positive Presidential Stance

Certainly a breath of fresh air today are President Bush's statements in support of a strong public service and his continuing efforts to communicate this message to the federal workforce and the nation at large. In his first post-inauguration speech outside the White House, the President addressed 3,500 members of the Senior Executive Service on the occasion of the Service's tenth anniversary. He said, "I want to make sure that public service is valued and respected because we want to encourage America's young people to pursue careers in government. There is nothing more fulfilling than to serve your country and your fellow citizens and do it well. That's what our system of government depends on." We can expect positive results from such statements -- both in terms of attracting good new people and inspiring those now on board.

Following more than a decade of denigration by others, the President's words may signal a welcome change in attitude toward the public service by the public at large. What is necessary now is to convert the President's words into action. Perhaps an initial step in this direction is the newly developed, White House-sponsored orientation program for new presidential appointees which, among other things, stresses the need for team-building between political appointees and the career service.

National Commission Report: Addressing the Important Issues

We would like to offer some comments on **Leadership for America: Rebuilding the Public Service.** First, a general endorsement. The Commission has clearly defined the threat facing the Nation if we permit public service to be considered a second-class career choice. Many Commission recommendations are on target and, while we may take issue with several of them, they should be seriously considered in the development of the agenda for public service improvement.

We strongly agree with the Commission's call for "a renewed sense of commitment by all Americans to the highest traditions of the public service -- to a public service responsive to the political will of the people and also protective of our constitutional values; to a public service able to cope with complexity and conflict and also able to maintain the highest ethical standards; to a public service attractive to the young and talented from all parts of our society and also capable of earning the respect of our citizens."

But if the public sector is to be successful in the increasingly competitive employment market -- and if the overriding public service objective of quality service delivery on behalf of the American taxpayer is to be met -- fundamental change is needed not only in pay-setting, hiring and promotion practices but in many of the ways government conducts its business. In its report, **The Executive Presidency: Federal Management for the 1990s**, an Academy panel urged the President to initiate a long-term, government-wide management reform effort, one geared to modernizing the delivery of public services. Only with a strong talent base within the Civil Service will this be fully achievable. With the Chairman's permission, we offer a copy of **The Executive Presidency** report for the record.

Letting Managers Manage

We endorse the Commission's recommendations to simplify the federal government hiring process. Few things are more frustrating to public officials than to know they have lost talented candidates merely because of the time it takes to make a firm offer of employment to highly qualified people who have expressed the desire to join the public service. Few things are a bigger turn-off to idealistic young people than to fall victim to the slow process of federal hiring. We join the Commission in urging the Office of Personnel Management (OPM) to continue to expand its experiments with on-the-spot hiring of qualified students by delegating this authority to operating officials in the agencies.

We favor broader delegation of operational personnel responsibilities to agency managers. In a recent statement prepared for the presidential transition, the Academy's Public Service Panel observed that OPM's role must be considered in the context of the federal government as not a single employer but the largest conglomerate in the United States. Flexible human resources management carried out by line managers is the key to meeting the needs of the complex mixture of organizations, occupations, missions and environments that comprise the Executive Branch. The panel recommended that OPM's leadership role consist of: serving as chief counselor to the President on issues of the public service; providing leadership on planning and developing the workforce of the future; rendering technical and functional leadership of the human resources management community; and providing leadership in promoting the quality and status of the federal civil service. With the Chairman's permission, we offer this statement for the record.

On a broader front, the Academy has long been on record as advocating greater streamlining and decentralization of authority in key functional areas such as financial management, procurement, administrative services and automated capabilities, as well as personnel management. Our position here is effectively stated in the report **Revitalizing Federal Management: Managers and their Overburdened Systems**, the product of an Academy panel. We offer this report for the record. We believe it is timely to revisit the issues raised in this report, and record the progress that has been made since its issuance more than five years ago.

Complexities of Compensation

Moving from more general personnel management issues to compensation, we wish to emphasize that compensation is not the primary driver enticing good people to public service. It is, rather, the appeal of public service programs. At the same time, we recognize that compensation is an important component. Certainly, pay scales are among the most visible -- and measurable -- bases for comparison among employers. We strongly support the Commission's tandem recommendations to provide more competitive pay and broader use of performance-based compensation systems. Superior performers should be paid accordingly.

We recognize that pay for public employees is a political issue as well as a management problem. It is a fact of life that Congress cannot quietly consider comparative compensation data, objectively assess whether government is able to attract and retain a highly skilled workforce, and make the necessary adjustments. We know that traditionally the general public is not sympathetic to granting raises to public employees, especially those in Congress, and that almost any action toward that end leads to public outcry.

Albert Einstein aptly pointed out that we measure things in terms of how they stack up against other things, and this is certainly the case with pay. Government employees who make enough money to sustain themselves in relatively comfortable lifestyles are or should be grateful for the opportunity. There are citizens in many parts of the country who would like to have public sector jobs.

However, the standard of living for federal employees doing the same work for the same pay varies greatly depending on the cost of living where they happen to live. People who move to Washington, D.C. from many parts of the country are among those who certainly understand this. But the federal government generally applies its pay scales nationwide, and adjusts pay only for the relatively small proportion of the workforce in shortage occupations. To solve the cost-of-living problem, some agencies with special personnel authorities are creating exceptions to federal salary scales. What is being created is a plethora of pay schedules, and a growing concern is that this may create serious inequities in the federal workforce within given geographic areas. The problem finally centers on particular geographic areas and particular skill areas. The fact is that in many locations and for certain skills the government is unable to attract and keep the kind of talent it needs.

The variable purchasing power of the federal paycheck is a particular hardship for the many employees who must transfer, at government request, from state to state. Many of these are law enforcement people in agencies such as the Federal Bureau of Investigation and the Bureau of Prisons, but any federal agency with offices throughout the country needs to move employees from one location to another. Members of Congress understand the culture shock of moving from a four-bedroom home, valued at $60,000 in Topeka, to a housing market in the Washington are where the same home costs

$240,000.

Devising New Approaches to Federal Pay

It is an understatement to note that the present pay-setting process for those at the top of government has not worked. We need practical alternatives -- perceived as fair by the public and public employees -- and we cannot wait another four years to develop them. We believe the recommendations of the Quadrennial Commission on Executive, Legislative and Judicial Salaries were on target in terms of paying senior executives salaries comparable to the salary levels the President recommended to Congress in 1969. However, we all recognize that the size of the proposed increase -- at least in a single step -- was more than the public was ready to accept. If the method for recommending increases in senior executive pay is not changed, we will face this same process again four years hence -- a process that initially encourages undue optimism at executive levels, but that eventually leads to the destruction of morale and disenchantment, and a process that has no credibility.

The pay of senior federal executives and judges should be decoupled from that of Congress. Every group that has studied the pay system linkages, which were created in 1967, has thought them a bad idea. It is nothing more than a device for holding salaries hostage to the political difficulties that Congress confronts in raising its own salary. The result has been to cause many top people to leave federal service and keep potential high-quality political appointees from responding to the President's call to serve in his administration. The Academy's research has shown that while many presidential appointees are willing to accept a financial sacrifice as a condition of public service, they eventually become overwhelmed by the fact that, while serving, they fall farther and farther behind in their ability to make ends meet. Many have found that government service wipes out their savings and even puts some into debt.

One possible approach to pay-setting is to replace the pay comparability approach with a system based on the Bureau of Labor Statistics-determined employment cost index. This employs the national level changes in employment cost as the basis for salary changes, and it is the basis for changing rates of pay for many private sector employers. The public would find more acceptable a process that changes the pay of government employees at the same rate as their own. Regional cost-of-living provisions could be paid in allowances, bonuses or as a part of pay. The military departments pay it in allowances which do not affect pension calculations. Whatever option is selected, it must be sufficiently flexible that special pay rates -- now proliferating -- would be used for only the true shortage occupations.

The method adopted should include an initial mechanism for helping senior executives recapture some of their lost purchasing power. A phased-in increase for senior federal executives appears to be the only practical approach. The Volcker Commission recommends that executive pay gradually be brought back to its 1969 level of purchasing power. If that goal is beyond reach, Congress will have to take steps to ascertain the level of increase necessary to attract and keep the executive talent needed for federal programs. The Academy will examine alternatives for doing this, and we will be pleased to share our results with this committee.

We should note that we disagree with any proposal which would provide increases to only selected Senior Executive Service (SES) positions. Such an approach would create inequity among positions in the SES, lead to divisiveness about what the Senior Executive Service really means, and intentionally or not, convey the message that some jobs are considered to be not as important as others regardless of the range of responsibilities.

The Ethical Perspective

One way to make a congressional pay increase more acceptable to the general public is to tie it to a comprehensive ethics package or to legislation eliminating honoraria. Ethical behavior on the part of government officials is crucial to maintaining the public trust in our system of government and the people who run it. The Commission on Federal Ethics Law Reform emphasizes this, and we commend President Bush for establishing the Commission and for the tone he has set for his administration. If Congress were to enact a separate salary increase for federal executives and the judiciary and demonstrate its willingness to address its own issues, the public just might be more amenable to pay increases for all.

Ethics regulations must be carefully drafted to avoid unintended results. Vagueness of the regulations and the resulting questionable impact they might have on post-employment opportunities could drive top managers out of government at a time they are needed most. And there is some evidence that is happening.

All public officials believe in the importance of ethical behavior. The difficulty lies in defining a code of conduct and the means for enforcing it in such a way that it does not prevent qualified citizens from accepting political appointments or top careerists from remaining with the federal government. We wish we could offer a simple solution. The Academy has developed a proposal, with the Ethics Resource Center, to address the crux of this issue: can steps be taken which will retain effective safeguards against unethical practice while improving the opportunity for qualified people to serve in government? This effort is being led by the Academy's Ad Hoc Panel on Ethics in the Public Service, whose chairman last week testified on the problem of federal post-employment restrictions.

Some Differences with Commission Recommendations

This brings us to several Volcker Commission recommendations with which we have some reservation. One, if there is an SES bonus system, we do not believe that the number of SES members entitled to bonuses should be decreased. If anything, the number should be increased. OPM does not see evidence, as the Commission apparently believes, that performance bonuses are disguised salary increases. Our inquiries indicate that private sector executive bonus systems invariably pay out bonuses of varying amounts to the very large majority of executives — often from 80 to almost 100 percent of them. Not only does this approach recognize particular executive contributions to the success of the enterprise, but it is periodic recognition from the top that the executive is a valued member of the management team. Employment of the bonus system by the government in this manner would go a long way toward building the "esprit de corps" of the SES in individual agencies, and, in the larger context, of the 6,500 members of the SES in a total workforce of more than two million. If the system cannot "afford" such an approach, it would be better to do away with bonuses altogether and rely entirely on the Presidential Rank Award system to identify the deserving few. Needless to say, any bonus system must certainly be based fundamentally on the contribution of the executive to the enterprise -- a system seen as fair and equitable based on performance expectations established by top management.

On another point, we take exception with recommendations to cover, at least in part, the cost of other recommendations by reducing existing unspecified personnel accounts. The phenomenon of absorbing costs -- or "eating it" -- has been going on in many agencies for years, and in some organizations is raising concerns about their capacity to perform. The consequences in selected cases were well stated by the Comptroller General in his James E. Webb Lecture at the Academy Fall Meeting. With the Chairman's permission, we offer that lecture for the record. If flabbiness has been found in agency programs, it should be specifically identified. If not, there should be recognition that, indeed, we are going to have to pay more to get the quality of government we need.

A third Volcker Commission recommendation with which we have reservations is that which calls for a one-third reduction in the number of political appointees. In **Leadership in Jeopardy**, an Academy report on the presidential appointments system, an Academy panel recognized the difficulties of relying so heavily on an "in-and-outer" system to manage government and recommended a reduction in the number of presidential appointees. But our concern is less with the numbers and more with the quality and the roles of political appointees and the way they interact with the career service. Rather than serve as policy makers and trusted political advisors — the recognized sphere of the political appointee — many appointees have assumed technical operating positions for which they have no special skills or experience. It is at this level, generally below the presidential appointee level, where considerations of professional competence and long-term commitment to the successful execution of programs must be paramount. This is not the place for "in-and-outer" generalists who, Academy studies show, come and go on the average of every eighteen months. Poor or frequently changing leadership in these positions can be damaging to program performance, and costly to the administration and to the taxpayer. We offer **Leadership in Jeopardy** for the record.

What Next?

The obvious next question is, "Where do we go from here?" Your committee hearings are an important first step in developing an action agenda for public service improvement. The recommendations of the Volcker Commission represent an important component in the development of that agenda. But there are other important issues pervading the state of the public service that cry for attention and cannot be ignored. Privatization is one of these issues. Key elements are the relative roles of the public and private sectors in the conduct of public programs, the configuration of the workforce, and the ultimate responsibilities of public managers and their accountability for performance. An important question here is whether the government will be able to attract and keep the quality of people it needs to plan, direct and oversee the conduct of its programs — especially high-tech — if the actual work which attracts the best is to be performed outside of government.

Another issue is the continuing practice of creating off-budget government enterprises, and the impact on across-the-board questions relating to civil service, such as operating flexibility, pay and other entitlements. A third is the continuing explosion of new technology, and its impact on the work place -- all the way from the nature and character of work, to the classification of positions, to the traditional hierarchy of government structure.

Many of the needed actions are far broader than Washington-based initiatives. As the Commission reminds us, the nation must elevate the importance of civic education as a part of social studies and history in primary and secondary school curricula. Many Academy Fellows are active in university public administration programs, and we expect that they will continue to encourage the Nation's colleges and universities to place greater emphasis on related programs at this level. All of us who now serve or have served in government need to accept personal responsibility for communicating the value of public service and its importance to upcoming generations.

As far as the Academy is concerned, we have provided to you today a number of the products resulting from our public service initiatives undertaken in past years. The Academy intends to build on these efforts, and we are currently at work developing with others a coordinating arrangement embracing the work of the Commission and other efforts related to public service improvement. Chartered by Congress to pursue such matters, the Academy looks forward to working with the Committee and supporting it to the extent resources allow to meet the objective that brings us together today: an improved public service.

STATEMENT OF RAY KLINE, PRESIDENT, STANDING PANEL ON THE PUBLIC SERVICE, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. KLINE. Thank you, Mr. Chairman.

I am Ray Kline, the President of the Academy. With me is Jim Colvard. By way of introduction, I'd like to say that in our comments today you will probably detect that our involvement with the subject reaches beyond the Academy. We are both charter members of the Senior Executive Service, Federal Government—both with more than 30 years of service, both have run major agencies or key elements of departments, and I believe that you'll see that some of our commentary will reflect that background, as well as the work that the Academy has done and is doing.

We have supplied your staff with a bundle of material. To what extent you choose to enter that into the record, sir, is, of course, the call of the committee. But rather than give you a very extensive statement here, we thought we would provide those resources to the committee to use in any way you see fit. I may mention some of these reports as we go through the summary of the statement today.

We are pleased to have the opportunity to provide the Academy's views on the status and future of the public service. We congratulate the chairman and the committee for their leadership in pursuing this matter because it is one of longstanding concern.

We believe that the Volcker Commission Report is an important contribution to public service improvement, and we hope that others, as well as the Congress, will certainly take that report seriously.

The work of the Commission is particularly timely because of the changing demographics of the United States work force, which is really going to add to the challenge of giving the nation the kind of public service work force it is going to need.

Because of the changing demographics, we believe that one of the challenges facing the government of tomorrow is going to be the need to provide more basic training to the kind of people who are going to be coming into the work force because of those shifting demographic patterns.

The skills required of Federal workers today are above those that one finds in the general population, but when one looks not too far down the road one readily concludes that the shift towards higher skills is going to continue and at a more rapid rate, and that tomorrow's Federal work force will continue to become more professional, even more so than today. So by the 1990s, the competition for the skilled worker is going to be very fierce, and government at all levels is going to have to be able to compete for the best and the brightest to make sure that its competitive package is going to stand up as that competition takes place.

Certainly a breath of fresh air today are President Bush's statements in support of a strong public service and his continuing efforts to communicate this message to the Federal work force and the nation at large.

We can expect positive results from such statements. I notice that every survey I have read on factors that are detrimental to the morale of the Federal work force, ranking no lower than third on any survey I have seen, is public image. Certainly the one who can take the lead role in making a shift in that image is the President of the United States, and we look with great favor on his having stepped out and having made those statements.

Now the question is to convert those words into action and help to inspire an even greater change of attitude toward the public service by the public at large.

I'd like to offer some very general comments on the Volcker Commission Report.

First, the Academy certainly generally endorses what it has to say. To enumerate a few things just by way of emphasis, rather than going down all the recommendations, we agree with the philosophical underpinning in the Commission's call for a renewed sense of commitment by all Americans to the highest traditions of the public service.

We believe that if the public sector is to be successful in an increasingly competitive employment market, and if the overriding public service objective of quality service delivery on behalf of the American taxpayer is to be met, fundamental change is needed not only in pay-setting, hiring and promotion practices, but in many of the ways the government conducts its business.

The focus here, sir, should not be limited to narrowly-construed issues about pay and compensation. There is a lot involved about the way the government currently conducts its business.

It is toward that end that we are providing supporting materials to the committee for its use in terms of examining and exploring what some of these other issues are.

One of these is the Academy report, "The Executive Presidency: Federal Management of the 1990s," an Academy study that came out late last year that talks about the environment of public management in the 1990s.

Mr. **Ford**. Without objection, that document will be accepted for our hearing file.

Mr. **Kline**. Thank you, sir.

We endorse the Commission's recommendation to simplify the government hiring process. In my travels, in meeting with young people in universities and elsewhere, they have two bones of contention—neither one is the unattractiveness of Federal public service. The first one is "How do you get in?" And, secondly, once they have committed to go, "why does it take so long to actually get hired?"

The Commission report talks about these things, and we endorse the recommendations for their resolution.

Beyond that, we favor broader delegation of operational personnel responsibilities to agency managers—delegations downward into the agencies. Toward that end, we believe that statements made about the leadership role of OPM certainly need to be emphasized.

We favor a movement away from OPM involvement in operational activities. These should be delegated, with greater OPM focus on the leadership context. Toward that end, the Academy developed a paper on the OPM role for the future and we are providing that to the committee to use in any way it sees fit, as well.

On a broader front, the Academy has long been on record in advocating greater streamlining and decentralization of authority. Without lingering on the point now, we have yet another report we would like to make available to the committee called, "Revitalizing Federal Management: Managers and their Overburdened Systems." This talks about things beyond personnel management in areas such as financial management, procurement, administrative services, and automated capabilities.

Again, what should be done to help improve the state of the public service reaches beyond the personnel process, itself.

Moving on to compensation, I think it is universally recognized that compensation is not the primary driver in enticing good people to public service. It is, rather, the appeal of public service programs. At the same time, we recognize that compensation is an important component.

Rather than my lingering on this point, upon completion of my statement Mr. Colvard will address some of the more specific things that we would like to say in the area of compensation.

By way of general statement in terms of the processes of arriving at compensation, I would list a few things.

The Quadrennial Commission on Executive, Legislative, and Judicial Salaries—that process, we believe, is fatally flawed. It is a process that every four years encourages undue optimism at executive levels, but one that eventually leads to the destruction of morale and disenchantment. It is a process that has no credibility.

We believe that among the things the committee should consider is what the corrective should be in that particular area.

We believe that the pay of senior Federal executives and judges should be decoupled from that of the Congress.

We believe that there should be an initial mechanism for helping senior executives recapture some of their lost purchasing power.

We have no trouble at all with the Volcker Commission recommendation that executive pay be brought back to the 1969 level of purchasing power, but if for political reason that turns out to be beyond reach, then we believe that Congress will simply have to take steps to ascertain what that level of increase needs to be to attract and to keep the executive talent that is going to be needed in the future.

We'd like to note that we disagree with any proposal—this is not in the Volcker Commission Report, but one reported out otherwise—which would provide increases to only selected senior executive service positions. Such an approach would create inequity among positions in the SES, lead to divisiveness about what the SES really means, and, intentionally or not, convey the message that some jobs are considered to be not as important as others, regardless of the range of responsibilities.

Along with it all goes the ethical perspective. Here, of course, the Congressional pay increase will eventually have to consider, we believe, the subject of honoraria and effectively deal with it. Ethics regulations must be carefully drafted to avoid unintended results. Vagueness of the regulations and the resulting questionable impact they may have on post-employment opportunities could drive top managers out of the government. There is some evidence that this may be already happening.

The difficulty in defining a code of conduct and the means for enforcing it in such a way that it does not prevent qualified citizens from accepting appointment or top careerists from remaining with the Federal Government is a key one, and the Academy, itself, is moving forth with a study effort to explore this issue and see if we can come up with some specific recommendations for the Congress and for others.

Do we agree with everything the Volcker Commission Report? Not everything. We take exception with a number of points.

Number one, the Volcker Commission says "Cut back on the number of SES bonuses." We disagree with that. We do not believe that the number of SES members entitled to bonuses should be decreased. If anything, we believe the number should be increased.

Based on our own looking around in the private sector, we find that it is practically universal that the very large majority of executives in successful firms in the private sector receive bonuses—often from 80 to almost 100 percent of them.

Not only does this approach recognize particular executive contributions to the success of the enterprise, but it is periodic recognition from the top that the executive is a valued member of the management team. If the government cannot "afford" an approach of broader bonus arrangements, we think serious consideration should be given to doing away with bonuses altogether and rely entirely on the Presidential rank award system to identify a deserving few.

Needless to say, any bonus system must certainly be based fundamentally on the contribution of the executive to the enterprise, a system seen as fair and equitable based on performance expectations established by top management.

Another point we take exception to is that part of the cost of making changes should be taken out of existing unspecified personal accounts. This is a phenomenon very popular with budgeteers, asking agencies to "eat it," to arbitrarily absorb costs to cover other cost elements that are coming to pass.

The reason we have trouble with this is that we believe that this committee and others are going to be facing a problem with many agencies about their capacity to perform. We believe that in his lecture at the Academy fall meeting last year the Comptroller General of the United States dealt with this issue, talked about four particular agencies involved, and we'd like to make that report available to the committee to see a fuller statement of that type of problem and what the potential may be down the road for greater difficulties.

A third disagreement we have is regarding the reduction of the number of political appointees. We found no factual basis to cut the number of political appointees by one third, and based on our personal experiences, sir, in the public service at senior career levels, we find that our concern is less with the numbers of appointees and more with the quality and the role of these political appointees and the way they interact with the career service.

We found that many appointees have assumed technical operating positions for which they have no special skills or experience. This can be ruinous to the effective operation of many agencies at many levels.

We think that in their proper preserve as policy makers and trusted political advisors there certainly is a role and the President certainly needs these capabilities for his own assurance that the reasons for which he was brought to town politically—to govern—that he has the resources to help him carry it out.

The question now is: where do we go from here? Your committee hearings are an important first step in developing an action agenda for public service. We believe the Volcker Commission Report represents an important component in the development of that agenda. In no way do we believe, sir, that the Volcker Commission Report fully represents the totality of the problem.

We think there are other things that are going on and developing—especially in the Federal service—that need attention as well. One of these is the subject of privatization. Key elements in this issue are the relative roles of the public and private sector in the conduct of public programs, the impact on the configuration of the work force, and the ultimate responsibility of the government by public managers and their accountability for performance.

A second type of question that we think is going to confront the Congress—even more than it has in the past—is the continuing practice of creating off-budget government enterprises and the impact on across-the-board public service questions relating to such things as operating flexibility, pay, and other entitlements.

A third is the continued explosion of new technology in the work place and the impact this is having on how people do their work, how they are classified to do work, how they are rewarded for doing work, all the way through the traditional hierarchy of government structure.

As far as the Academy is concerned, we have provided you today with a number of the things we have done in the past. We want to emphasize, Mr. Chairman, that the Academy is chartered by Congress to assist in any way we can as you address these issues and support the common effort that brings us together today—an improved public service.

I'd now like to ask Mr. Colvard to talk about the compensation, if that is agreeable with the Chair.

STATEMENT OF JAMES E. COLVARD, CHAIR, STANDING PANEL ON THE PUBLIC SERVICE, NATIONAL ACADEMY OF PUBLIC ADMINISTRATION

Mr. **Colvard**. Mr. Chairman, I am pleased to be here this morning. I will summarize a few points and then will stand by for questions.

First of all, I would like to add to President Kline's remarks to commend the Commission for providing a voice for the public servants, because one of the problems that we have is that the public servants cannot speak for themselves, because any presentation they make of their problems is viewed as self-serving.

As has been indicated in testimony, our studies in the Academy support the findings.

In my view, in summary, we have a major problem in the public service. It has taken us a while to get there. It has taken more than one Administration denigrating the public service to get us to the Nadir of the public service's existence. It will take some time to solve that problem, but, in my opinion, the time has come to act. We have studied it long enough. All of the findings over the last several years point to the same kinds of problems and talk about the same kinds of solutions.

The key to this whole process of recovery is appreciation and respect for public service. Everybody says that, and it must be reflected in pay, and that is not a self-serving comment—it is fundamental to a society that values people on the basis of how much economic achievement they have made.

Current approaches clearly have not worked. We need to de-politicize the civil service process. We need to find a pay-setting mechanism that does not require the Congress to vote for its own pay because historically that never works. We can either do that by separating the Administrative and Judicial from the Congressional, or we can find a system that is viewed as equitable by the public and have all the people come under that.

One such system would be to take the economic cost index, employment cost index that the Bureau of Labor Statistics currently keeps and use that as the baseline and have automatic increases for the Judicial, the Executive, and the Legislative from there.

The current system of having the Bureau of Labor Statistics do a special study that leads to the conclusion that we've got a 26 percent gap in pay between the public and private sector is fatally flawed, it is not believed, and it is not effective, and it has not been followed in the last two Administrations.

It is time to do away with that and move to a different system.

In addition to de-politicizing the pay process, I believe in a modern, complex society such as ours that the personnel system must be decentralized. We must simplify the process so that it can be understood by the average, non-specially trained mind. It is an abstruse, obtuse process at the moment, and it is the interpretive purview of a few people who are specially trained and reside in a central location. We must, in fact, change that. We need to decentralize for speed of execution and to reflect the cost of living and the reality of the work place.

The centralization of policy to maintain sufficient elements that we can, in fact, have a Federal system such as a retirement system, the health benefits, and the merit process are appropriate, but the decisions on hiring and pay and localities must be an element, in my opinion, of a workable future system.

I think we, in fact, have to recognize, as President Kline has alluded to, that the problem is way beyond pay. It is a recognition of the fact that the career civil service is that critical element that allows a representative democracy to function and to change its policy leadership on a regular basis and to continue to have the trains run on time on the right track.

You can replace the policy-makers because they are dealing in the general functions of government. You cannot replace in a quick fashion the technical experts required today to operate in a complex society. We simply must recognize that there have to be a balance between the policy makers and the political appointees and the career civil servants.

We, in fact, need in the career civil service people who have the competence to do what is right, the courage to do it, and the integrity to recognize when they, themselves, are wrong, and the imagination to continue to look for solutions tomorrow rather than to rely on the solutions of the past.

In a nutshell, it is difficult to determine when the quality of public service has begun to deteriorate. You have anecdotal information, you have a lot of personal opinions.

The real serious danger is that it is such an insidious process and it is not recognized until the effect is obvious and it is too late to recover. In my opinion, we have studied the problem long enough; it is now time to act.

I am pleased to be here and I would be delighted to respond to any questions.

Mr. FORD. Thank you.

Without objection, the additional appendices that have been mentioned here—you have three of them, right?

Mr. KLINE. Yes, sir.

Mr. FORD. They will be mentioned in the record and retained in our hearing file.

[The witnesses, Mr. Kline and Mr. Colvard, submitted five publications of the National Academy of Public Administration. The documents were retained in the official hearing file, and are referred to at this point as follows (by title): (1) The Executive Presidency: Federal Management for the 1990s; (2) Revitalizing Federal Management: Managers and Their Overburdened Systems; (3) The James E. Webb Lecture—An Emerging Crisis: The Disinvestment of Government; (4) Leadership in Jeopardy; and (5) The Future of the Office of Personnel Management.]

Mr. FORD. Both of you gentlemen have talked about decentralizing the personnel system. Then you sort of generally skip over it by saying it would be better if managers had "at the local level" more authority on hiring. Describe to me exactly how you think that works. What is it you're talking about?

Mr. COLVARD. We have that in several areas now, Mr. Chairman. Let me give you my experience from a scientist out in California at the Naval Weapons Center.

We had direct hire authority for scientists and engineers because they were in scarce supply and in demand. When we determined, from evaluating their college record and in an interview, that they were qualified to come into the Federal Government, we could make an offer on the spot. We simply need that kind of authority because when you're hiring in a competitive market place, the delay in making a decision is often critical.

The reason I went to work for the Federal Government rather than Hughes Aircraft, from which I received a considerably more remunitive offer, was the fact that the person that interviewed me from China Lake California, of which I'd never heard in my life, could make a decision on the spot that I was the kind of person that he wanted to come into the Federal Government. That ability to act and decide, in my opinion, is critical.

We have it now in a lot of areas, and we ought to generally apply it.

Mr. FORD. You mentioned China Lake, which I have, over the years, some knowledge of because I have spent a lot of time with the school people there. I continue to hear people extoll the China Lake system as if it was some kind of a magic thing. I take it that your impression is that China Lake has worked very well for China Lake?

Mr. **Colvard**. China Lake has worked very well in several areas.

Mr. **Ford**. Can you tell me quickly where else you'd put the China Lake system and hope to have it work?

Mr. **Colvard**. I believe, personally, Mr. Chairman, that you can put the China Lake system in the whole Federal Government and it will work quite well. It is not the final solution to all the problems. It is a lot more tested than the system we currently have. It had had no evaluation when we applied the current system.

In fact, the data suggests that it will work not only with scientists and engineers in the isolated realm of China Lake—which is not the end of the world but you can see it from there—it also works in San Diego where it was applied.

It is my opinion that the fact that it gives the managers the responsibility, accountability, and authority allows it to be effective. If you wanted to expand it on a less grandiose scale, I would recommend you do it with the rest of your research and development centers in the Navy and the rest of DOD because they have similar characteristics.

It is, again, not the panacea. It is not the final solution. But it was tested for five years, it was evaluated and found to be more effective than what we have now.

Mr. **Ford**. How do you do that and keep it consistent with the principles of the merit system and the status of the Federal Government as a single employer?

Mr. **Colvard**. Well, the fact that you have authority to make decisions on pay doesn't do away with the merit system.

The process by which you hire——

Mr. **Ford**. I'm talking about hiring.

Mr. **Colvard**. The process by which you hire and promote people is still based in the merit system in the China Lake experiment. There is no deviation from that. It simply gives you more discretion in the way that you describe the complexity of work into bands as opposed to highly articulated, arcanely-defined grade levels.

It has nothing to do with the rights of the employee to appeal. It has nothing to do with the merit principles by which they are hired.

Mr. **Ford**. I've already stated publicly my desire that we could develop some kind of a system that recognized local market conditions and also special skills. It is not easy to do. What do you think, from your perspective, is the danger? What do you think we should do to avoid the risk of encouraging competition between Federal agencies for a scarce skill at a time when we're getting our ears beat off by competition from the private sector?

Mr. **Colvard**. You have competition right now, Mr. Chairman.

Mr. **Ford**. Pardon?

Mr. **Colvard**. You have competition right now. What you do is compete to buy the person that can most effectively re-write the position description so they can get the classification level that you want. What you do by going to a more open system is put some integrity in the process.

I don't think it is unreasonable to be somewhat competitive. If I am a more effective manager and can create a work environment where you want to perform, what is wrong with that?

I think one of the things you need to do in terms of locality pay, though, is be mindful of the fact that it reflects currently in the retirement system. So you may want to have the differential not applied to the salary that is counted for computing retirement because you could have problems of working your last few years in San Francisco and retiring in North Carolina, where I am from, where you can live on imagination.

Mr. FORD. I wish you hadn't put that on the record. I'm always looking for an idea that I can put away like a squirrel, that I can use as a bargaining chip when they start trying to again chip away at the pension system. That is a kind of nice little after thought that has been with us for sometime, something we could use down the road, so to speak. I don't want OMB to get all excited about it at this time because we don't really need to give something up at the moment.

You make a very good point that has been raised as the inequity between paying people for the same job and job classification a different salary because they're performing the work in two different areas.

Mr. COLVARD. Yes, sir.

Mr. FORD. It is highly unlikely that a very large number of these people in a very high- cost area in civilian employment are going to retire there.

The Washington metropolitan area is not a bad place to retire for the military. It is not a good place to retire from the civil service. Therefore not many retiring civilians stay here. They don't have access to the things that are attractive to retired military in this area or in San Diego, for that matter. Because this is one of the champion high-cost areas, Federal employees are thinking of going to places like North Carolina and Michigan when they retire

Thank you.

Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

In some prior testimony we pinpointed a need for some sort of a central reference area for positions that are available in executive-level and in mid-level. Apparently there is a lack of any central information service on what is available out there. When we are seeking new people, how do we publicize our needs? Do you have any recommendations of how to overcome that problem?

Mr. KLINE. Mr. Colvard was recently the deputy director of OPM. I think we ought to start with him in terms of what exists and what they're thinking about.

Mr. GILMAN. All right. Let's start with OPM. What are your thoughts? Did you look at the problem while you were there? Have you resolved it? Maybe it has been resolved and I——

Mr. COLVARD. Well, the accessibility to the Federal system ran into trouble when we took the form 57s out of the Post Office Department years ago. And it got into a further problem when we did away with the PACE exam. The ability to have access to jobs in the Federal Government is probably one of the biggest bones of contention right now.

When I was in OPM we tried to redress that somewhat by using things like, in Oklahoma, direct newspaper advertising so people could do as you do in private industry. In Texas we hooked into the State employment offices, which was computerized and very effectively run.

There is no magical solution but it is, in fact, a very serious problem.

I think one of the major challenges to OPM is the business of making accessible. We did try some approaches. We did not solve the problem. I'm not here to say that. But I think the open market approach of newspaper advertising is not bad, although in Oklahoma we didn't have an awful lot of response.

Mr. GILMAN. But that leaves a lot to be desired. Of course, it is regional and it doesn't get across the countryside.

I note the regional offices of OPM put out a listing. Why can't that be somewhat more comprehensive and take care of positions nationally, or at least have some compilation available if someone wants to refer to it?

Mr. COLVARD. Well, we don't really hire nationally. We hire where the jobs exist and where the agencies exist. So national listings, by the time people see them, in my own opinion, are somewhat out of date. It is sort of like buying real estate. You want to know the local people, because by the time something gets a formal listing, all the good stuff is gone.

So I don't think there is anything wrong with a regional approach because you hire regionally. We hire a lot of people in Washington, but that is a region in its own right and we advertise there. But the Space Center in Texas hires there, the laboratories in California and——

Mr. GILMAN. Does the regional listing take care of mid-level positions?

Mr. COLVARD. I don't honestly know the answer to that. My instinct is to say yes, but the truth is that I don't know.

Mr. GILMAN. Why did we do away with those listings of PACE, or whatever we called it?

Mr. COLVARD. Well, the devise of the PACE exam had to do with the consent decree that said that when a lower percentage of minorities and hispanics pass it than whites, that it is not fair. While it was shown that there was generalizability from the exams and that people who passed that exam performed significantly better than people who don't, we're dealing in a democratic society where social equity is one of our objectives, as well as excellence. In the interest of social equity, that was agreed by the Carter Administration and the end of the Administration to suspend the use of that exam, which was the process by which generalists got into the system. It is not my point to argue the merits of that, but simply to——

Mr. GILMAN. What was the alternative to that system?

Mr. COLVARD. The alternative was to allow people to use what was called "Schedule B," which was a hiring authority and an exception to that process.

Mr. GILMAN. That meant that the applicant doesn't really know what is out there, right? There is no way of being on the list for being considered for those positions.

Mr. **Colvard**. That's correct, and that's one of the problems that we were addressing. I think there has been enough experimentation done now that there are ways to do it.

My own personal preference would be to do it locally and to use the employment agencies where they are well automated, such as we did in Texas and found it to be very effective, and the use of public listings with the region, if you will, for the others at all levels.

Mr. **Gilman**. Including mid-level?

Mr. **Colvard**. Yes, sir.

Mr. **Gilman**. I would hope you might make that recommendation a little more formal. I think we should be exploring it as we find ways to recruit more people out there.

How do we enhance recruitment?

Mr. **Kline**. Sir, I'd like to say a few words about that.

There is nothing better than the direct contact by a program official. In my background—I was with the Von Braun team at the Marshall Space Flight Center at the time of Apollo going to the moon—a dramatic thing to watch was how very good people were attracted into public service.

To have someone—a program director—from the Marshall Center go to a campus and say to the bright young people, "Come and help us go to the moon," there is no substitute to that in any paperwork process I've ever heard of.

At that time, because of the nature of the problem, there was hiring authority in the hands of that program manager who could say on the spot, "We'd like you to join us and hope to see you Monday morning."

Twenty-five years passed. Last week I had the opportunity of meeting with the personnel directors of all the NASA centers and I asked how it was going in contrast to the Apollo days. Their answer is not what this committee has been hearing from everyone. In the NASA culture, the level of what they are able to attract today to come into the NASA centers nationwide matches or exceeds that at the time of Apollo. The GPA ranges from 3.2 to 3.4. Someone may ask, "What happened to the 4.0s?" The answer: NASA never did get the 4.0s. You can never compete with the private sector salary-wise, even in the heady days of Apollo, to bring those people in.

On this point we're talking in the context of scientists and engineers. Today NASA is generally feeling good nationally about the intake. They fear that too much is going to be said in a negative way about good people not willing to come into the public service, that these young tigers are going to hear about that and won't sign up.

So the concern about self-fulfilling prophecy has really got to be observed. The Washington condition and the New York condition is not necessarily the national condition. A lot of very bright people want to join up. One great feeder of the Johnson program is Purdue University. For the Marshall Center a great feeder is Auburn University. These people are turned on to the program, which becomes the great attraction. If I come in, what am I going to do? What is the program imperative? What am I going to do?

No one can make that statement better than a person from the organization involved in the program. The process, sir, I believe, has got to allow for that direct interaction with potential new hires by people who know what they are looking for and, in programmatic terms, what they are talking about.

When Mr. Colvard talked about delegating these authorities outward, these are the kinds of things that we believe have proven to be very effective in selected cultures across the government. The more this can be encouraged, we think, the better off government is going to be.

Mr. **Gilman**. Is there any prohibition now from doing just that?

Mr. **Kline**. The NASA centers have the local hiring authority now. This is not a government-wide condition. It varies by agency.

Mr. **Gilman**. You would recommend that for all agencies?

Mr. **Kline**. Yes, sir. Much more of it. Absolutely.

Mr. **Gilman**. Thank you.

Thank you, Mr. Chairman.

Mr. **Ford**. Would the gentleman yield?

Mr. **Gilman**. I'd be pleased to yield.

Mr. **Ford**. During consideration of the Civil Service Reform Act I raised the point that on the Labor Committee we had discovered back in the 1960s that it was not the practice of the then Civil Service Commission to use the United States employment service. So we put specific language in section 3327, "(a) The Office of Personnel Management shall provide that information concerning opportunities to participate in competitive examinations conducted by, or under authority delegated by, the Office of Personnel Management shall be made available to the employment offices of the United States Employment Service.

"(b) Subject to such regulations as the office may issue, each agency shall promptly notify the Office and the employment offices of the United States Employment Service of: (1) each vacant position in the agency which is in the competitive service or the Senior Executive Service and for which the agency seeks applications from persons outside the Federal service; and (2) the period during which applications will be accepted."

Of course, we put language in to excuse the excepted service from that requirement.

Why is it that GAO told us the other day that the number of agencies who follow this is practically non-existent?

Mr. **Colvard**. I don't know why they told you that because that's not true. In fact, they do follow it. And, in fact, the review process in OPM requires it before they can submit someone to be approved for the Senior Executive Service that they have done that. I know personally of cases we have turned down where they did not do that.

I also can say from my experience that very seldom do you get a Senior Executive Service member from that listing but it is, in fact, done, and it is required by the procedures.

So I can only assume that they either didn't understand the question or they didn't have the background. I'm sure there was no reason they would tell you purposefully wrong information, but it is done.

Mr. **Ford**. How long were you deputy director of OPM?

Mr. **Colvard**. For two years.

Mr. **Ford**. Then what you're saying is that if Mr. Gilman, in seeking an answer to his problem, were to contact OPM, they could give him a list of the vacancies presently extant in each of the Federal agencies covered by the Civil Service System?

Mr. **Colvard**. In the Senior Executive Service, as you stated.

Mr. **Ford**. Well, it says, "Concerning opportunities to participate in competitive examination conducted by or under authority delegated by the Office of Personnel Management." And then it goes on to talk about "all positions plus the Senior Executive Service." You're saying you only do it with the Senior Executive Service?

Mr. **Colvard**. That was the only one I was familiar with, Mr. Chairman. I did not track the others and don't know whether it was or was not done. But I——

Mr. **Ford**. Mr. Gilman indicates that he was told there was no such centralized list available. Did they stop when you left?

Mr. **Colvard**. As I said, the only one I'm addressing is the Senior Executive Service because that is where I had personal experience and personal interest because we were trying to get a broader outreach to get more people from outside the existing cadre of government employees.

I do not have knowledge of below that level, as I indicated earlier.

Mr. **Ford**. Thank you Mr. Gilman.

Mr. **Gilman**. Just to clarify, is there a central listing of Senior Executive Service positions nationwide?

Mr. **Colvard**. I don't know if there is a central listing for Senior Executive Service nationwide. Any agency must use the Federal employment system listing before they can advertise for and hire an SES. Part of the Civil Service Reform Act—I think one of its very positive provisions—is that it delegated the Senior Executive Service decisions down through the agencies. That all used to be done at the old Civil Service Commission in executive personnel.

So an agency, once they get their number of SES positions assigned, has the authority to go out and recruit to fill those positions, but they have to come back to OPM for final approval, and one of the check offs—they have to go before the Qualifications Review Board, and one of the things they have to have in their package going before that is that they did advertise nationally with proof thereof, and we have turned them down when they didn't do that. That's precisely what I'm addressing.

Mr. **Gilman**. So if we're looking to try to enhance recruitment with graduates in graduate programs to come into the government service, we can't give them a list of what is available out there, can we?

Mr. **Colvard**. You cannot give them a comprehensive list of what is available in the United States Government. I think that correct.

Mr. **Gilman**. That seems to me to be a shortcoming that we ought to try to resolve. Do you agree with that?

Mr. **Colvard**. No. I don't agree that that's a big problem because, as I said, you hire locally. I think it is important at the Senior Executive level because these are people who are nationally mobile. But at the mid-career level you are not going to get people from

San Francisco to apply for jobs in Charleston, South Carolina, and you are adding an awful lot of administrative over-burden for a very low return on your investment.

While it sounds intellectually great to say that there is a national place that lists all of this, I think the greater problem—and you're dealing with a real problem—is that people have an understanding of how one accesses the Federal Government, whatever job you are interested in. That's where we found the problem—with the diminution of emphasis on the job centers in OPM's regions which Director Horner changed and re-emphasized.

I went to Texas, for example, when I came in there, and the job center for Federal employment was located on the sixth floor of the Federal Building that, unless you were born there, you couldn't find out how to get there. It is that accessibility of how one searches out within the region that you are interested——

Mr. GILMAN. That's essentially what we're addressing here. How do we make it a lot more simple? You can't even call some of these regional centers and get a response on the telephone. They tell me you wait hours before you get an open line in some of these centers.

Mr. KLINE. Mr. Chairman, the problem is very well stated. Like I said earlier when I summarized my testimony, this is what young people say when you go around and talk to them, "How do we penetrate the fog bank." And I agree that the answer is not necessarily a national kind of data bank, but certainly much greater focus and attention to the problem on a regional or a district basis across the country is definitely needed—more than we have today.

Mr. GILMAN. Let me ask you: if you had graduates come to you, as many of us in Congress do, where would you tell them to start to look if they have some engineering talents? What do you tell them? Go from agency to agency? That's a very frustrating method of seeking employment.

Mr. KLINE. That's correct. And I was asked this by a student at American University three weeks ago.

Mr. GILMAN. What was your advice to him?

Mr. KLINE. My advice here was to ask him if he had any idea of a program area that he was interested in. Just to point him across a whole spectrum of all the agencies of government that had engineering talent, I could see the young fellow giving up before he left the room. But he didn't have any particular program area.

I could not give him a data base kind of answer as to how to do it, but rather to look at the spectrum of agencies and then to penetrate in an area where he thought he would have some programmatic interest.

Some of the people do it that way.

Mr. GILMAN. That's a very unsatisfactory answer, sir.

Mr. KLINE. It's a problem.

Mr. FORD. Would the gentleman yield?

Mr. GILMAN. Yes.

Mr. FORD. You mentioned the Apollo program. As a Member of the Labor Committee I went with the late Congressman Ashbrook of Ohio to Cape Canaveral when the Apollo program ended. We found literally hundreds, perhaps thousands, of engineers who had become expendable. We discovered that there was no system by which those aeronautical engineers could find where else in the government they might be needed as engineers. We don't even have a system that tells us when we change the mission and technology of a program where former employees can find information about the federal jobs in their area of expertise.

These people had become very specialized, but they were engineers before they became specialists, and presumably it is easier to retrain an engineer for another discipline than it is to start from scratch. Yet we had no system that we could find by which we could make known to other agencies that this raw material was already sitting there out of work in a house that they couldn't make payments on any more because they had been RIFed. How do we get at that sort of thing?

Mr. **Colvard**. There are a couple of things in that regard. There is a referral system up the line within agencies, and it eventually pyramids up to OPM if the agency can't handle and place the people.

There is also an effort underway that Director Horner started in OPM called "Clear America" which tries to deal with the very pertinent question that you are wrestling with in terms of job fairs, outreach, and increased emphasis out in the region with information at the national level telling people who they should deal with. Here in the local area you can go to OPM and they do have a job information office as a subset of the regional process.

So when I emphasized that a national data base or listing isn't going to solve the problem, it isn't to suggest that there is not a problem or that there aren't some significant efforts being made to solve it. There are.

Mr. **Dymally**. Mr. Chairman, would you yield for a question.

Mr. **Ford**. Yes.

Mr. **Dymally**. Let me ask this question again. Are you saying there is no central Federal bank on job vacancies?

Mr. **Colvard**. To my knowledge, Congressman, there is no central data bank on Federal job vacancies.

Mr. **Dymally**. Do you think we ought to have one?

Mr. **Colvard**. No.

Mr. **Dymally**. Why?

Mr. **Colvard**. Because you don't hire federally for most people, you hire locally where the jobs are. The majority of the people move 1.1 time in their career, even if they make SES. They tend to be hired and live their life where they grew up.

Mr. **Dymally**. But the student who goes to Berkeley comes from Michigan and he wants to go live in Missouri. So if there were a job bank he could very well find out where and how that vacancy exists. You confine him to stay in California where he doesn't want to stay.

Mr. **Colvard**. No. I'm sorry I didn't communicate effectively. I'm saying that there shouldn't be a job listing, but there should be a process where the student from Berkeley can call up the regional office of OPM, express their territorial interest, and find out through that process where there are jobs available in areas that they might be interested in. To maintain current a national data bank, in my personal opinion—not the Academy's opinion—is not effective.

Solving the problem of access to public employment is a real problem. We spent a lot of time and energy on it. But you must solve it in a fashion that is tractable to the people. To say to you, "We've got this big national data bank, isn't everything wonderful?" will solve the political pressure that you may put on the agency, but it will not solve the real problem in my opinion.

Mr. **Dymally**. Well, I was looking at it more as a service rather than a response to the kinds of pressures we have to respond to—constituent requests—which would seem to me that around May and June college graduates can get into the bank from some central agency and find out where the vacancies are. They may very well want to travel. If they're looking for jobs in the Northeast, but the vacancies are on the West Coast, how do they know that?

Mr. **Colvard**. They can get the information by going through the regional office of OPM, and they have offices in San Francisco.

Mr. **Dymally**. The regional office has an answering service, and I find it rather frustrating. I call agencies and I get an answering service and I cuss the answering service and hang up. [Laughter.]

Mr. **Colvard**. Well, fortunately I'm not currently the deputy director of OPM and I'm not speaking for them to defend their practices. But it is a problem. It is being attacked. My point is very simple: a national data listing will make people feel good, but it won't solve the problem.

Mr. **Dymally**. Let's agree to disagree.

Ms. **Morella**. Would the gentleman yield?

Mr. **Dymally**. Yes.

Ms. **Morella**. On that issues that we've been talking about, this is a great brochure, nice color pictures to tell something about what is going on in the Federal Government where you could serve, but this, plus a few other papers, costs these kids $7.50. Now, I submit that if you are trying to recruit people into Federal Government you can't put a dollar sign like that on it. It would be better to come out with something more succinct. Would you not agree?

In other words, I just think that this is absurd that you have a group of materials that people have to pay for when you're trying to do an aggressive recruitment campaign. I wonder if you might comment on that?

Then I wonder if you might tell me if this was contracted out or done internally.

Mr. **Colvard**. Fortunately I wasn't there when that brochure was put out. [Laughter.]

Mr. **Colvard**. I am not trying to jump on somebody else. I have no idea whether it was contracted out or what the price was put on it or why it was put on it.

I can respond intellectually to your comment that, of course, charging people to get information about public service on the surface looks bad. I don't know that background behind it, and I'm not going to sit here and condemn somebody else for doing it because I wasn't associated with it.

Ms. **Morella**. But, indeed, you would agree that this is certainly contrary—

Mr. **Colvard**. With the data that you have presented to me, I would agree with your statement. I don't know the background on it. That's not meant to be evasive, but to be fair to somebody who is, in fact, trying to do a better job of making public employment known and available to citizens in this country.

Ms. **Morella**. I think there should be an amount allocated for that kind of recruitment since we're talking about doing it.

Mr. **Colvard**. I'm sure OPM would love it.

[Letter of clarification from OPM follows:]

U.S. Office of Personnel Management,
Washington, DC, May 18, 1989.

Hon. William Ford,
Chairman, House Post Office and Civil Service Committee, U.S. House of representatives.

Dear Mr. Chairman: Dr. James E. Colvard has told me that at the recent Volcker Commission hearings there was some confusion about the new Federal recruiting materials "CAREER AMERICA". Since we are very proud of this product. I want to set the record straight on what we have done and how we expect it to be used.

It has been clear for some time—and reemphasized in *Civil Service 2000* and the Volcker Commission report—that competition for new employee is becoming increasingly keen. OPM decided to develop recruiting materials of the highest quality both to improve the image of the civil service with potential employees and also to show the importance we attach to the civil service in the materials we produce to describe it.

In June 1988, "CAREER AMERICA" was officially introduced to Federal agencies and educational institutions. The eight contemporary and inviting brochures and a poster (enclosed) were distributed to all attendees. Subsequently, OPM distributed over 40,000 courtesy copies of "CAREER AMERICA" to Federal agencies, colleges and universities, professional associations and constituency groups. Copies were also sent to Members of Congress and Heads of Departments and Agencies. We continue to use "CAREER AMERICA" to attract talent into the Government; and we have made the materials available for Federal agencies to purchase them and we strongly encourage them to use the materials also. Indeed, we designed them to make it easy for agencies to adapt them to particular recruiting purposes. We certainly do not intend for potential employees to purchase them nor are we aware that anyone has asked them to.

The production of a high quality package, while not inexpentive, provides a recruiting tool which will allow the Federal Government to compete with other employers for attractive candidates. Agencies and OPM order the recruiting packets through an internal Government procurement system. Prices vary, with actual costs determined by the quantity ordered by all of us together. Because of the volume of packets being ordered, the unit cost for the packet now being printed will be less than $2.00. (For the rare occasion when someone outside the Federal establishment wishes to purchase one—an academic or public interest group, for example—the packet is also available from the Superintendent of Documents at a cost of about $7.00.)

We hope that Federal agencies will pass out the new material to people they are interested in hiring so that these potential employees will get a first-rate depiction of the civil service and the attractions it offers, and we hope that the quality of the materials will contribute to a revival of interest in the public serivce.

If there is anything I can do to ensure effective use of our materials, or if the Committee would like a supply, please let us know.

Sincerely,

Curtis J. Smith,
Associate Director for Career Entry and Employee Development.

Ms. **Morella**. May I ask any more questions? Are you ready for me at this point?

Mr. **Ford**. Go ahead.

Ms. **Morella**. Great.

Doctor Kline, in reading your comments and listening to you present them you responded to the Volcker Commission in a number of areas. One of them that hasn't been discussed yet is the fact that you feel that it isn't necessary that there be a one-third reduction in the number of political appointees. Then you go on to comment on the fact that some of the difficulties are that they don't have the expertise, they don't have the experience, they don't seem to fit in. I'm just wondering how you would remedy that other than to reduce the number of political appointees. Would you say that number is fine? What handle do you have on assuring that these other requirements are met?

Mr. **Kline**. In terms of the numbers, first of all I haven't the slightest idea how the figure of one-third reduction was arrived at. Based on my personal experience, there is enormous variation across the agencies of the government as the amount of political penetration. Where I spent a third of my life, in NASA, there has been very little political penetration over the years because there is no such thing as a Democratic space shuttle or a Republican space shuttle. You need technical engineering talent to make those things go.

In other places there has been additional penetration.

So we do not want to get lost in the numbers game. But we had another kind of point that we thought ought to be made, and that is that if you have political appointees, whether Presidential with Senatorial confirmation, or Presidential otherwise, or being appointed by political officials in the agencies, a very critical question we believe is what these people are being asked to do.

To have them inserted into line managerial roles calling for some technical expertise in programs that have years to run where the incumbent may not even be around—because our studies yield that every 18 months there is turnover at those political levels—that kind of jerking around, from a taxpayer's standpoint, is enormously costly to the enterprise.

So we believe that a lot of focus should be placed on what political appointees are hired to do rather than just looking at numbers in and of themselves.

Ms. **Morella**. But in a way indirectly you are actually approving or agreeing with the Volcker Commission. I know you're saying no reduction of numbers, but you're saying "Let's make sure they're highly qualified, they fit into the position, we've got to have the continuity and look ahead." But you're not telling how it can be done since it is a political appointment. But you say "Let's not reduce the figures as the qualification." I don't know what you recommend.

Mr. **Kline**. The point that I wanted to alert the committee to is that if action is taken to cut one third political appointees, that does not automatically solve the problem we are talking about.

Ms. **Morella**. Right.

Mr. **Kline**. It is what people are being asked to do. And then is one third the right number? I can't tell you if that is a good number or a bad number or even in the ball park unless we were to do a lot more penetration.

Ms. **Morella**. You think there is an implicit assumption in the fact that they made that recommendation?

Mr. **Kline**. Yes.

Mr. **Colvard**. Let me comment briefly on that. If you cut a third, how do you know they won't cut the third that is doing a good job and leave the two-thirds that is the problem? The quality—there is no way to tell an Administration, Republican or Democrat, "You will appoint qualified people." They always think they appoint qualified people.

Ms. **MORELLA**. Right.

Mr. **COLVARD**. But I think there is a lot of public pressure through the press and the Congress that looks at agencies that get over-politicized, and they tend to do that. I can give you, from personal experience, working with two different sets of appointees, one of whom valued and trusted the role of the career civil service—and this is part of the point we are making—and used those people because they recognized they were critical to the effective governance. And there were others who treated them as if they were the enemy and would not hold a policy discussion with a career civil servant present.

On the contrast, Mrs. Horner, for whom I worked in OPM, would not hold a discussion of policy of OPM without the career civil service present, and she left in place in all of the technical fields career civil servants who understand the compensation system, the health benefit system, etc.

And so we're simply saying it is the attitude and the actions of the individual.

Now, given the same number of people with a different philosophy you get disastrous results.

Ms. **MORELLA**. I can understand. I just think that they felt that if you reduce the numbers you reduce the possible problems.

The other final question I wanted to refer to had to do with the bonus program that you talk about. You said that they should, instead of decreasing the number, as recommended, they should be increased. How do you work out a bonus program that doesn't conflict with one of the points that you bring out about the random kind of checkered pay scale situation that we have? Would you like to comment on that? I just found the statement a little general.

Mr. **KLINE**. Yes, ma'am. Suppose that you have an agency with 100 people in the career SES entitled to bonuses. It is laid on by fiat as to what number is allowed to get bonuses, regardless of performance. Let's say the number is 40 percent. The rule book says no matter how well your complement is performing, up to 40 percent get bonuses, and the other 60 percent do not—arbitrary in and of its nature.

At the time that this provision was placed in the Civil Service Reform Act, my supervisor at NASA was the retired executive vice president of IBM, and one of his jobs early in his career was sitting at the right hand of Thomas Watson and deciding who in IBM got bonuses at the executive levels.

When I came back from one of the meetings where we were discussing setting up this process, he asked to describe the new system regarding bonuses, and I described it to him. Without batting an eye he said, such a system is fatally flawed, and history will bear this out. If you are setting a low number of executives entitled to bonuses, this is going to turn out not to be an incentive but to be a disincentive on your executive complement.

He recalled that in IBM over 98 percent got bonuses every year. He said they did not all get the same amount, but the bonus system was in part recognition by the top of the IBM corporation of the management team that makes the total enterprise go. Incidentually, and he said that the two percent that didn't get bonuses got something else, and that was a message: 'Pull up your socks or get out."

He believed that for IMB this was a very successful arrangement whereby once a year there was some tangible acknowledgement of a contribution of an executive, for whatever level, in terms of what he was doing as part of the management team.

He noted that in the creation of a Federal Senior Executive Service, out of a population of two million career Civil Servants, 6,000 of the elite have been selected to enter the SES. And then, having flattered them and invited them in, you're telling them that once a year not more than 20 or 30 percent will be recognized for their contributions. In the net, this is a disincentive from an organizational standpoint.

Some of you may remember that immediately upon passage of the Civil Service Reform Act when the first bonuses were granted there was the outcry as to why these feds were getting bonuses which led to an immediate reduction in the number allowed to receive them.

In my mind, the people in the Senior Executive Service have yet to recover from that—the credibility of the system and what these bonuses really mean and to what extent the system can be politically jerked around.

Based on that experience, and talking to other people in other corporations, I believe personally that the value of a bonus system exceeds more than just a periodic pay out. There are things involved that invoke such as words "esprit de corps," being part of a "management team", a periodic recognition of the executive contribution.

My view is that if the situation requires us to lower numbers allowed to receive them, do away with bonuses. There are a lot of people in the system who say we should do away with bonuses because these people don't trust the bonus systems in their respective agencies. With no bonus sysem, we would only rely on the Presidential rank award system for annual recognition of a relative handful.

Both Mr. Colvard and I have been recognized under the Presidential rank award program, and we could easily let it go at that. But I personally believe in a bonus feature for executives in the Federal system.

Ms. MORELLA. But actually, as you then articulate how the bonus should be administered, it would, in effect, be a pay benefit that would be expected annually, with the exception of maybe a few people who are being pinpointed, as you say, to be given a message.

Mr. KLINE. But a very key sentence in that paragraph is the last one. If you have a bonus system it, indeed, has got to be based on performance standards and expectations from the top of the agency. It can't just be perceived as some kind of an annual handout of equal amounts to everyone. There has got to be a system and an evaluation process.

In my last job I evaluated 125 SESers. The toughest thing I had to do was deciding who received bonuses and how much. This is no easy task to handle when you talk about setting performance standards government type of work.

Ms. **Morella**. But you say ideally it should be about 98 percent, 95 percent?

Mr. **Kline**. If it goes in any direction it should be upward and certainly not downward. That's correct.

Mr. **Colvard**. Control the dollars, not the number of people. Give the same number of dollars in aggregate, but differentially apply it on the basis of performance.

One of the problems in the public sector is that everybody knows when you get those, so it has some problems in that regard that the private sector doesn't have. But people can accept that they're not in the top one percent or five percent, but they can't accept psychologically they're not in the top 50 or 40 percent. So if you're going to go that far, you——

Ms. **Morella**. So they could accept that they would have the smaller percentage——

Mr. **Colvard**. That's correct.

Ms. **Morella** [continuing]. Given as a bonus, as long as they get something?

Mr. **Colvard**. They can say to their peers, "I got a bonus this year." They don't have to say "It was a lot less than I wanted." But now they have to admit, "No, I didn't get one." And when 60 percent of your people have to admit that they weren't in the meritorious receiving side, that's a problem.

Ms. **Morella**. Thank you. I've taken up enough time. Thank you, gentlemen.

Thank you, Mr. Chairman.

[The following letter was received for the record subsequent to the testimony of Dr. Colvard:]

THE JOHNS HOPKINS UNIVERSITY
APPLIED PHYSICS LABORATORY

Johns Hopkins Road, Laurel, Maryland 20707
Telephone: (301) 953-5000 and 792-5000

DIRECTOR'S OFFICE

May 4, 1989

The Honorable William D. Ford
Chairman, Post Office and Civil Service Committee
309 CHOB
Washington, D. C. 20515-6243

Dear Congressman Ford,

I thoroughly enjoyed the opportunity to testify before your committee on Tuesday. I regretted that we spent so much time discussing the details of OPM's implementation of recruitment approaches, but I guess with my background as Deputy Director of OPM the questions were inevitable. It is not clear to potential employees how they can approach the federal government for employment information. That is a problem. The problem has been exacerbated in recent years by several things. The removal of federal employment information from post offices and the loss of a national comparison standard (because of the Carter administrations consent decree that suspended the use of the PACE exam.) that makes national registers meaningful were two things that I mentioned. There was another major cause that I did not mention because I thought it would serve no useful purpose. Don Devine felt we should not try to attract employees to the federal service and dismantled much of the job information apparatus associated with the regional offices. He cut the OPM staff by more than 25% and much of that came out of the regional offices. OPM is making a concerted effort to re-establish the outreach aspects of their regions as well as focus a national campaign around Career America. You will be pleased to know that I checked with OPM and they do NOT charge students or any other potential applicant to receive the brochure that Congresswoman Morella exhibited at the hearing. What they do charge is the agencies the costs they incur for printing since they have no budget to support the effort. That campaign is going very well and I have agreed to speak at a recruitment conference in Wilmington, N. C. this July to aid the effort.

One area we did not discuss extensively that deserves some more elaboration is the idea of making the Employment Cost Index (ECI), the criteria for changes in federal employees pay. The current PATSI study done by the BLS gives an inaccurate picture because it takes descriptions of work done in the private sector and rates them against the classification standards and then assigns a salary to them. These salaries are then compared like rated work in the federal sector. What happens of course is that the descriptions of work in the public sector are inflated to get higher grades and thus compensate to an extent for the lower pay scales. This is obvious when one looks at the electronic engineers in the nations private sector and finds that the majority of them are at the GS-12 or below and then looks at the population of federal employees and finds that the majority of them is at the GS-13 and above. What this shows is that managers distort the administrative system to try to retain their employees in the face of market competition. When honest people, as these are, have to distort the system to achieve legitimate purposes, as they are trying to do; then the system has to be changed. The ECI does not depend on translation of abstractions as the PATSI study through its classification process does. It simply looks at the changes in the cost of labor for the whole country. This is a politically acceptable index because neither the public nor public employees can rationally argue that it is unfair to change public employees pay at the same rate that the pay of other employees in the country is changed. If a system were adopted that changed federal pay, including judicial, administrative and legislative automatically each January as driven by the ECI it would de-politicize the whole process. To make this workable the current pay gap has to be closed in some fashion. The gap varies by occupation, but in looking at the problem I found something like a 10% to 15% gap, not the 26% or so that the press publicizes. For political acceptability, it would in my opinion be possible to close a 10% gap by adding 2% to the ECI for the next five years and then let the ECI control from then forward.

This approach could solve the aggregate pay problem. There is an additional problem of the public perception that all federal employees get equal pay treatment whether they perform well or poorly. The China Lake approach with the pay bands and greater flexibility in the hands of the supervisor, allows the better performer to get more pay and makes the decision process open and the manager accountable. This system offers a tested way to make pay for performance work better. It is not the final solution - there are no final solutions. It is proven better than the current system and it is regrettable that it has not been expanded to other agencies of the government. I began my public career as a physicist in the missile development arena. We would never develop and test a missile that proved superior to the existing one and then continue to use the old one, but that is precisely what we have done in the China Lake experiment. We passed a law that said run experiments, we ran one, it worked and then we fell into arguing about whether or not it is perfect. The public servant deserves better performance out of our political institutions, both Congress and the Administration than it has gotten out of this process.

Again let me thank you for the opportunity to appear before your committee. I am proud of my more than 30 years of public service and I continue to be willing to help in any way I can to further the quality of and respect for the public service. If I can be of any assistance to you or the Committee please let me know.

Sincerely,

James E Colvard
Dr. James E. Colvard
Associate Director

Mr. **Ford**. The next witness is Ms. Patricia Florestano, Vice Chancellor for Government Relations, University of Maryland, and Past President of the American Society for Public Administration.

Without objection, your prepared statement will be placed in the record before the beginning of your comments. You may proceed to supplement it, add to it, or summarize it in any way you feel would be most beneficial for the record.

[The prepared statement of Ms. Florestano follows:]

The American Society for Public Administration

Committee: U.S. House Committee on Post Office and Civil Service

Subject: Report of the National Commission on the Public Service

By: Patricia S. Florestano
Vice Chancellor for
Governmental Relations

Date: May 2, 1989

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The American Society for Public Administration celebrates its 50th anniversary this year. Since ASPA's founding in 1939, American life has changed dramatically. We have witnessed the civil rights movement for minorities and major changes in the roles and responsibilities of women. We have witnessed the impact of the "democratization" of higher education. We have witnessed the impact of the so-called social revolution. During these 50 years, the jet engine, the cathode-ray tube, and the silicon chip have done as much as any election to change American life. By speeding up social change, we have shortened time distances. By constant improvements in travel, we have wiped out physical distances. By creating new communications technologies, we have eliminated the distances of the mind.

At the very time that ASPA was being established, President Roosevelt's New Deal was altering irrevocably the role of government in the life of the American citizen. During the years of the New Deal, government evolved into a powerful force for distributive justice, influencing the allocation of wealth, resources, and opportunity in this nation.

How ironic that now, after five decades in which government managers and government programs eased so many of our life's hardships, the public service has fallen in esteem in the eyes of many. The federal civil service system marked its 106th anniversary on January 16, 1989 - unhappy, unhealthy, and under siege. Public officials, including recent Presidents, have chosen to characterize the people who work in public service across this great nation as rule-bound, turf-conscious, empire-building bunglers, who get too handsome a wage, too cushy an annuity, and too secure a job guarantee, for too little work. Political columnist Haynes Johnson said that since the assassination of John F. Kennedy, the ideal of public service in America has steadily eroded. "However, history judges Kennedy's abbreviated presidency," said Johnson, "its most important ingredient was an attitude -- a striving for excellence in public life."[1] The years since have fostered a cynicism about public servants and public service. Although President Kennedy was not the only president to have spoken favorably about government workers, his comments were very apt. Kennedy said:

> You may have been told that government workers are clock watchers; you will soon find that the vast majority of them are dedicated not to their pay checks but to the job to be done. You may have heard that government jobs involve nothing but plodding routine tasks; you will see some of the most exciting, interesting work in the world being done. You may have read that public servants are unimaginative, security-seeking, uncreative, skilled only at the techniques of empire-building; you will discover that we have far more than our share of lively minds, endowed with vigor and courage.[2]

Obviously, none of us can deny that all organizations -- large and small, public and private -- have some employees who are irresponsible, inefficient, or even dishonest. But such behavior should be accepted for what it is: the exception or the aberration. Too often, however, the occasional breakdowns, the unusual scandals, the individual injustices, or the isolated shortcomings of government employees are generalized into the bureaucratic "horror story". We have all heard such stories; they graphically describe how some unlucky citizen has been mistreated by a government employee. Such stories taint the reputation of all public employees.

Unfortunately, in addition to politicians and business executives, who on occasion arouse or exploit anti-bureaucratic sentiment, print and electronic journalists all too frequently report and enlarge upon unjustified attacks. Critics of government like to quote poll results, but only those poll results that ask general questions about the general performance of government. In his book, The Case for Bureaucracy,[3] Charles Goodsell points out that when citizens respond to polls which do not ask for specifics, a few reply with the general negative images presented to them via the news media. Such generalities do not truly represent citizens' views, Goodsell says, and cites data from surveys which show that when citizens are asked about their direct personal experiences with specific government agencies, their responses are overwhelmingly favorable.

What is the result of all this criticism? Bernard Rosen, former Executive Director of the U.S. Civil Service Commission and an ASPA member, said:

> Continuing irresponsible criticism of government bureaucracies and bureaucrats undermine the effectiveness of the very public service that the people must depend on in order to realize the promises of public policy. In the long term, the results of such criticism are catastrophic. As soon as they have options, first-rate performers leave government service and others with outstanding abilities decide not to enter. Those

who remain feel battered and helpless and their motivation and productivity reflect it.

According to ASPA's Centennial Agendas Committee, the field of public administration and the public service of tomorrow must confront a number of critical issues in the future. Among these are:

1. The legitimacy of government and the ability of governments to govern. In this nation and elsewhere, governments are seen to be working less well then we want and seem not to be able to build or hold a consensus of support.

2. Constitutional concerns about the changing nature of the federal system and the means of dispersing power and responsibilities between the states and the federal government.

3. Changes in the political and social environment - the blurring of public and private sector, the control of rapidly advancing new technology, and the decline of resources.

4. The professionalism of the public service, the way public managers are trained and developed, the role of generalists and specialists, the interplay among political and merit system employees, and continued outreach to women and minorities.

5. The specific reforms needed in management systems and administrative skills, reforms needed in budgeting, planning, and managing.

6. Finally, the issue of the reputation and the future of the public service, and the question of ethics and ethical standards for public servants.

Many of us in the public service have believed that we could weather what we hoped were the passing storms of this criticism. But the crucial question confronting us, and you, concerns the young people in our country. Are they deciding that a public service career is neither respectable nor attractive? If that were to happen - if the young among us, if the able among us, if the most capable among us, were to look elsewhere for their careers - what would that mean to the nation? It would mean that the nation must deal with all the challenges of the future without the best and the brightest, and without able people trained for and desirous of serving the public.

I was President of the American Society for Public Administration in 1983-84. As President, I chose to deal with what I believed to be the most pressing of those challenges listed above: to respond to attacks on the efficiency, effectiveness and integrity of the public service. Further, not just to respond, but to work at creating a more positive view of public employees. As President, I traveled thousands of miles, speaking to and meeting with not only our members, but government employees at all levels of governments. In the process of making these speeches, I urged government employees everywhere to speak out and challenge unjustified criticism of public employees.

I believe that the members of Congress and State and local elected leaders must use every opportunity to create a more positive climate for public management. We do this by citing the significant contributions of government workers and asserting the integrity, competence, and productivity of fellow professionals in the public service. It is necessary for us to remind the journalists of the importance of trained and dedicated personnel carrying out the tasks of government. It is necessary for us to remind the business leaders that efficient and effective government requires inventive and visionary employees. And it is necessary for us to remind the American public that the skills required and the tasks performed in the public sector are as intricate, as urgent, and as rigorous as those required in the private sector - and often more so.

It is for these reasons that I appear before you, on behalf of the American Society for Public Administration, to vigorously endorse the Report of the National Commission on the Public Service. On April 12, 1989, the National Council for our organization adopted a resolution in support of the Commission's Report. That resolution is attached to my testimony. In brief, we believe the Report to be exemplary, and we strongly urge the Congress to support its call for a renewed national commitment to public service by implementing all of the Commission's recommendations. We urge the appointment of a special commission, to include representatives from the Congress and the Executive Branch, to ensure implementation of all of the Commission's recommendations. For our part, I know that schools of public affairs and administration across the country are studying the Report to see how best they can be a part of meeting the goals set forth in the Report. Finally, speaking for our organization, the only public administration organization whose members are both practitioners and academics, I know that we will undertake initiatives based on the Commission's work.

I would like to close with the words of my colleague, Dr. Charles H. Levine, who served as Deputy Director of the Commission until his death last September.

> The linkage between public service and nation-building is an old and enduring one. It is this relationship and the high ideals of democracy that ought to make public service - creating conditions under which it survives - a high priority for everyone.

Thank you for your attention.

Footnotes

[1] Haynes Johnson, "Government Service," The Washington Post, Nov. 22, 1981.

[2] Quoted in "In the National Interest," The Bureaucrat, Spr. 1983

[3] Charles Goodsell, The Case for Bureaucracy, Chatham, House Publishers: Chatham, N.J., 1983.

ASPA
4-18-89

RESOLUTION ON THE REPORT OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

WHEREAS:

- The National Commission on the Public Service was formed in 1987 to prepare action recommendations to the President and Congress on what public service leaders had identified as a "quiet crisis" in the federal civil service;

- The Comission was chaired by Paul Volcker and composed of 36 men and women with broad experience in government and private life, including a former President and Vice Preisdent, members of Congress, and leaders of business and academia;

- The Commission found that public service is neither as attractive as it once was nor as effective in meeting perceived needs as it should be;

- In a period of public concern for crippled nuclear weapons plants, defense procurement scandals, leaking hazardous waste dumps, near misses in air traffic control, and the costly collapse of savings and loan institutions, the Commission found it especially important that government recruit and retain the most talented workforce possible.

- The Commission has issued a report calling for a "renewed sense of commitment by all Americans to the highest traditions of the public service" and offering numerous recommendations to strengthen the leadership, talent and performance of the federal service;

THEREFORE, BE IT RESOLVED THAT:

- The American Society for Public Administration congratulates the National Commission on the Public Service for its exemplary report and supports its call for a renewed national commitment to public service;

- The President and Congress should consider and act on those Commission recommendations which would improve the efficiency and effectiveness of the federal civil service;
- Furthermore, we urge the appointment of a special commission, to include representatives from the Congress and the Executive Branch, to ensure implementation of the Commission's recommendations;
- Schools of public affairs and administration should take the lead in encouraging discussion and action on the Commission's recommendations in the higher education community;
- Existing public administration organizations should follow up on the Commission's recommendations and undertake additional initiatives building on the Commission's work;
- Governors, mayors, and legislative bodies acting together or on their own, should (1) act on Commission recommendations, such as promoting civics education at the elementary and secondary school levels, and (2) sponsor similar initiatives to document the condition of the public service at state and local levels and identify actions needed to achieve excellence in public service at all levels of government.

Implementation:

Copies of this resolution shall be made available to the President of the United States, Congress, the directors of the U.S. Office of Management and Budget and the U.S. Office of Personnel Management, governors, the mayors of major U.S. cities, and members of the National Commission on the Public Service.

Adopted by the Policy Issues Committee, April 7, 1989.
Adopted by the National Council, April 12, 1989.

STATEMENT OF PATRICIA S. FLORESTANO, VICE CHANCELLOR FOR GOVERNMENT RELATIONS, UNIVERSITY OF MARYLAND, AND PAST PRESIDENT, AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION

Ms. FLORESTANO. Thank you, Mr. Chairman and members of the committee. It is a pleasure to be here.

Unlike Mr. Kline and Mr. Colvard, I come to you as an academic who has spent a good part of her career in the classroom working with young people who are studying government and public administration, and who is now working as an administrator with our State's elected officials.

I represent the American Society for Public Administration, which celebrates its 50th anniversary this year. I mention that to you because in the 50 years since it was founded, public service and government in this country have seen incredible changes.

If you remember the presidency of FDR in 1939, that presidency altered irrevocably the way we look at the public service. During the years of the New Deal the national government evolved into a powerful force for distributive justice in this country and influenced the allocation of wealth, of resources, and of opportunity.

It is rather ironic that after five decades in which government managers and government programs have eased so many of our life's hardships, the public service no longer has the esteem it once had.

It is rather interesting to note that however we look at the presidency of John F. Kennedy, one of the high marks of that presidency was the tone it set for the public service and the attitude it imparted to young people. We still have colleagues who remember hearing him speak on various campuses across the country about the importance of public service and the value of public service.

One of the quotes I often used in my classes when I was teaching was one from Kennedy. He said, "You may have been told that government workers are clock watchers; you will soon find that the vast majority of them are dedicated not to their pay checks but to the job to be done. You may have heard that government jobs involve nothing but plodding routine tasks; you will see some of the most exciting, interesting work in the world being done. You may have read that public servants are unimaginative, security-seeking, uncreative, skilled only at the techniques of empire-building; you will discover that we have far more than our share of lively minds, endowed with vigor and courage."

Obviously none of us can deny that all organizations, whether public or private, have their share of various kinds of talent. What we have all gotten very tired of in the public service are the bureaucratic horror stories. We have all gotten very tired of the business leaders, the journalists, and some elected politicians who have chosen to enlarge upon these kinds of stories.

I commend your attention to a book I used to use in my classroom called The Case for Bureaucracy by one of my colleagues, Charles Goodsell. In it he talked about how we utilize public opinion polls in this country and he talked about how quite often if you go to the citizens and ask them a very general question about government you may get a generally negative answer. But if you, in fact, ask them about a specific agency and their specific experiences, you will more often than not get a very strongly positive answer.

The problem with so much of this criticism, as we have seen it for the last decade, is that it undermines the effectiveness of the very public service that we are depending upon in order to realize the promises of public policy.

Several years ago our society, The American Society for Public Administration, had a Centennial Agenda Commission. That commission took a look at what the public service today and in the future must be dealing with—the kinds of issues, the kinds of concerns.

Among those were the whole question of the ability of governments to govern. Our governments seem to be working less well than we want them to or than they used to be.

Another concern that this Centennial Agenda Commission said was that the public service was going to be dealing with was the changing nature of the Federal system— the whole question of allocation of power and responsibilities, who will do what between the States and the Federal Government.

A third issue they noted for the future of the public service were changes in our environment—the blurring of public and private sector, the control of new technology, the declining availability of resources.

Still another was the whole question of the professionalism of public service. How do we train public managers? How do we develop them? What is the difference between the generalist and the specialist in our society? What is the interplay among political and merit system employees? How do we continue to outreach to women and minorities? How do we train in the skills that are needed—budgeting, planning, managing?

Finally was the whole issue of the reputation and the future and the question of ethics and ethical standards.

Many of us who have been in public service have believed that we would weather what we hoped were the passing storms of this criticism. But the crucial question, as I see it, and from my perspective on a college campus, the question for you is: what about the young people in our country? Are they deciding that a public service career is neither respectable nor attractive?

If that is happening, if the young among us and the very able among those young, if the most capable among them decide to look elsewhere for their careers, what does that mean to us in the future?

It means we've got to deal with all these challenges without the very best and brightest of our young people.

I was president and president-elect of the American Society for Public Administration from 1982 to 1984, and as president I chose as one of my principal activities to respond to attacks on the efficiency, the effectiveness, the integrity of the public service. Further, not just to respond, but to work at creating a more positive view of public employees.

When I was president I travelled thousands of miles speaking to and meeting not only with our members, but with government employees in State government, local government, and Federal Government.

I urged them to speak out and to speak up. I urged them to challenge unjustified criticisms of public employees. But obviously that is not enough.

I believe that you in Congress and that State and local elected officials have to use your opportunities to create a more positive climate. We do this by talking about the significant contributions of public administration and our fellow professionals.

It is for these reasons that I appear before you on behalf of the American Society for Public Administration: to vigorously endorse the report of the National Commission on the Public Service.

On April 12 of this year our national council adopted a resolution in support of the Commission's report that is attached to my testimony. In brief, we believe the report to be exemplary. We strongly urge the Congress to support its call for renewed national commitment to public service by implementing all of the Commission's recommendations.

We especially urge the appointment of a special commission to include representatives from the Congress and Executive Branch to ensure implementation of the Volcker Commission's recommendations.

For our part, I know that schools of public administration and public affairs across the country are currently studying this report to see how best we can participate in meeting the goals it sets forth.

Finally, speaking for my organization—and we are the only public administration organization whose members are both academics and practitioners—I know that we are undertaking a number of initiatives based on the Commission's work. For example, we have already scheduled a special conference to be held this fall on the issue of ethics in government. We have also issued a statement calling for the decoupling of Executive and Judicial pay from Legislative pay.

We operate a newsletter wherein we attempt to make available to our members and to students those job openings at State and local levels and what we know of those at the Federal level.

I'd like to close with the words of my colleague, Doctor Charles Levine, who served as deputy director of the commission until his death last September. He said "The linkage between public service and nation building is an old and enduring one. It is this relationship and the high ideals of democracy that ought to make public service, creating conditions under which it survives, a high priority for everyone."

We join you in this task, and I thank you for your attention.

Mr. **Ford**. Thank you.

You seem to be a particularly good witness to give us some advise on this. Goal seven of the Volcker Commission Report was to recruit the very best graduates.

Ms. **Florestano**. Yes.

Mr. **Ford**. They have two suggestions: the President and Congress should establish a presidential public service scholarship program targeted to 1,000 college or college-bound students each year. The President and Congress should expand and strengthen government's current programs for recruiting college graduates in the public careers—specifically the Presidential management internship program should be expanded from 400 positions per year to 1,000.

Now, from your vantage point of being in government and now back on the campus, what would be your prognosis for that being a successful approach to enticing people into government?

Ms. FLORESTANO. You have zeroed in on two of the recommendations that I personally consider most important, Mr. Ford.

Working with young students, a Presidential scholarship program would be very attractive. I have had experience with the Presidential management interns, and this has always been a marvelous way of recruiting students to the excitement and to the value of government service. I think that those two are among, from my perspective, the most important of the recommendations that I would most like to see enacted. And they would, in fact, be very effective.

It is the kind of situation—internships in our business have always been highly respected. Whether they are at the State or local level—particularly at the Federal level—they give a student a sense of participation, a sense of excitement, and, in many respects, they are the "hook" that gets them committed to a career in public service where they may or may not be vacillating. They are a marvelous experience and I strongly endorse both of those recommendations.

Mr. FORD. Do you think we should be encouraging Federal agencies to involve themselves with those colleges that have co-op education and doing the things that private enterprise does with those colleges?

Ms. FLORESTANO. Very much, sir. Those, once again, entice a lot of very good young people into their future careers. The co-op programs, in particular, give young people who may have financial limitations an opportunity to go to college and gain direct experience. Nine times out of ten it is our experience that they, in fact, will stay on where they have had that practicum.

Internships provide the same kind of valuable background for translating the classroom to the excitement of actually doing the hands-on kinds of work.

We also find that a major factor, in addition to what we try to do in the classroom and in addition to the availability of fellowships and scholarships is, in fact, the visit of the recruiters. If those recruiters are there, together with the other kinds of opportunities, this gives students that ease of access that Mr. Kline and Mr. Colvard talked about so much. It gives them a way in—a way of understanding the process of getting into the government.

Mr. FORD. As you know, each year the college board picks out what they think is a balanced selection of entering freshmen in colleges and universities around the country, and asks them to complete a questionnaire. During my ten-year stint as Chairman of the Higher Education Subcommittee, I used to look at those answers fairly regularly.

One change I saw as compared to the majority of responses in the 1960's was the answer to the question, "Why do you want a college education?" In the 1960's the overwhelming majority stated such ideals as: "To make a better world." "To be able to do better things for people." "To do better things for my country."

For almost a decade now, the answer to that question has been primarily, "To make more money."

There are a lot of people who applaud the fact that we don't have compus demonstrations like we had in the 1960's, and that college students seem to be more pragmatic. They overlook the fact that a lot of students are saying, "Just get me through and give me that piece of paper so I can sell it."

What does that portend for enticing people into public service?

Ms. **Florestano.** I think there are two factors operating there. One that you are aware of from your experience in dealing with higher education is the fact that compared to 10 or 20 years ago, many of our students are financing their way through college with loans—not grants and scholarships, but loans. They have that burden hanging over their head. They know they must pay that back. For some students that is a very practical matter that determines that they won't go into school teaching but into business. That's part of it.

But the other side of it I think is the atmosphere that has been set by our national public officials for the last eight to ten years where there wasn't talk of the joy of public service, there wasn't talk of the exemplary public employees. If it was anything, it was the other kind of talk. It was criticism. It wasn't a call to join the Peace Corps or call to join VISTA or call to join the service.

I think that we can reverse that atmosphere. I think certainly that President Bush is making inroads in that in terms of his respect for public service. But I think it is going to take a kind of commitment from all of our national officials and our State and local officials to talk about the joy of public service, the pleasure of service, and to get more young people excited about it.

I don't think we've done that for ten years. For ten years we have talked about business and about making money, and that has been part of our problems with ethics issues in both business and government.

I think that, in combination, perhaps, with some way of looking at the problems of financing public higher education so students aren't dependent on loans and do not have a tremendous debt awaiting them when they finish—I think it is a two-pronged answer that we need to respond to what you're talking about.

Mr. **Ford.** I was involved in creating the Legal Services Program. I remember having discussions with Sargent Shriver, who had a much different experience than most when he came out of law school. His first employment was with his family at a much higher rate of compensation than most of us in that period expected when we came out of law school. Sarge just believed that lawyers were worth much more than what we were paying in the Legal Services Program, so he wanted to very substantially increase the pay.

As a person who has never knowingly voted against anybody's pay increase in his whole life, I spent a good deal of time arguing with Sarge that he'd ruin the program if they paid a Legal Services lawyer a salary commenserate with private attorneys.

We had so many highly committed, energetic, young people who wanted to do good, that we didn't have to pay them top money.

Today the Legal Services job pays much more than it did then, but we don't get those kind of people. I don't think we could get them if we wanted to. One of the reasons you have just mentioned is that as we have allowed the value of the grant money that comes from both Federal and State, as well as institutional money, into the education pot, the vacuum that created has been filled more and more by borrowing more and more money.

And so we find people from a modest to poor background who tended to be the ones, when given the opportunity, with some memory of what their family's hardships were, to dedicate themselves to some public service, coming out as a new class of indentured servant who cannot make a choice to go work in Appalachia because they've got the bills to pay.

At some institutions the average medical school graduate who used loans owes $100,000. At Georgetown the average lawyer owes $40,000. At the University of Detroit Dental School the average dentist who used loans while they are in school is $40,000 to $50,000 in debt.

Very few of those people have any possibility at all of doing the kinds of things that the relatively affluent group of people back in the 1960's who were then in the system decided to do. When we started those programs we did not then have the large numbers of people from extremely low income backgrounds attending colleges and universities. We were still pretty much in the area of recruiting college students from families that could afford to help them go to school.

Considering something like the scholarship program, recommended by the Commission, there is a little bit of cynicism that creeps up and says:

> Yes, but is this going to get us the kind of people we need, or is it going to get the one who looks at it solely as a way to help pay for the education and who has some other objectives in mind?

I hope that you can give some thought to that. A number of us are very much interested in the Commisison's recommendations in that regard. We'd like to find a way to do that, and I have to, on the basis of my experience around this place, believe that unless we can show the Congress and the President that we have some kind of a hook in the form of a commitment to years of service from these people it won't fly.

ROTC started with Abraham Lincoln—it goes back that far. People forget that the way the first Morrill Act was finally sold to Lincoln was that it was going to be a way to train officers and he didn't have officers. He was having a devil of a time building an army. People used to buy commissions in those days. That is how Morrill created the Land Grant College System in this country.

When I hear people at the Land Grant College in Michigan, which is Michigan State, back in the period of the late 1960s and early 1970s they didn't want ROTC on the campus, and I got tired of trying to explain to them that if it hadn't been for ROTC there wouldn't be any campus.

If you research the history of laws and policies, almost invariably there is a pragmatism among politicians that says, "We've got to be able to show the taxpayer that this investment is buying us something."

Back in the Eisenhower Administration a program of loan forgiveness for teachers was because because there was a terrible teacher shortage at a time when a baby boom population was coming through the schools. You can't sell it now no matter how you wrap it. It just won't float with today's politics.

For many years we gave grants to people for medical school expenses, and in turn they would serve so many years with the Public Health Service as physicians in areas that were undeserved with medical care. The budget has wiped that out. We don't do that any more. That was a budget decision, not a decision based on whether the program worked or was needed. I suspect that in both cases it did work and it accomplished what it was supposed to do, but today's budgetary constraints are such that you can't sell something like this unless you can show a payoff. It will have to be described in something other than academic or altruistic terms.

If you can help us design something that looks like a duck, quacks like a duck, but isn't really a duck, that's what we need.

Ms. FLORESTANO. I think it is not unreasonable for you to look for that kind of commitment from young people who get these. And, in fact, there are various kinds of programs for young people that do imply an obligation thereafter to participate, and I don't think that is unreasonable. I don't think higher education would believe that was unreasonable.

We are watching with great interest now the number of proposals in Congress that have to do with public service and higher education.

While we don't favor those that are mandatory, the idea of tying public service to some form of reimbursement and loan forgiveness for higher education we think is a reasonable one, and I think your request is a reasonable one.

We'd certainly like to help you with that.

Mr. FORD. Thank you very much.

I'm going to have to recess for a few moments. Mr. McCloskey is on his way to take over the hearing. Unfortunately, we obviously had no way of knowing this when we scheduled today's hearings, but I have to be on the floor to handle two bills from this committee as soon as they get through with the preliminaries. I probably won't be able to return for some time until it is my turn and we dispose of the legislation. Afterward I will be back to finish. I hope we can finish, because we have a lot of witnesses who have been waiting all morning.

We will stand in recess for a few moments.

[Recess.]

Mr. MCCLOSKEY. The hearing will come to order.

I understand Chairman Ford should be here within a reasonable amount of time. He has a couple of bills on the floor.

I am Congressman Frank McCLoskey sitting in for Mr. Ford.

I believe our next witness is Mr. William A. Morrill.

Welcome, Mr. Morrill.

We will also hear from Mark A. Abramson. Mr. Morrill is the immediate past Chair, Mr. Abramson is the Executive Director of the Center for Excellence in Government.

Gentlemen, your formal statements have been accepted by the committee. You can proceed as you like. Thank you.

STATEMENT OF WILLIAM A. MORRILL, IMMEDIATE PAST CHAIR, AND MARK A. ABRAMSON, EXECUTIVE DIRECTOR, THE CENTER FOR EXCELLENCE IN GOVERNMENT

Mr. MORRILL. Thank you, Mr. Chairman. I am Bill Morrill, the Immediate Past Chair. With me is Mark Abramson, the Executive Director. We are pleased to be here to make some comment about the report of the National Commission on Public Service "Leadership for America."

The Center for Excellence in Government, composed of business leaders with government experience, has a keen interest in obtaining the highest quality public service and in supporting major improvements toward that end. The Center, therefore, has worked closely with the Commission since its inception and is grateful for the contribution that the Commission has made in focusing the nation's attention on this critical issue.

Before turning my attention to the recommendations of the Commission, I would like to emphasize to important points.

First, regardless of one's political persuasions— and The Center's membership spans every Federal Administration from Franklin Roosevelt through President Reagan—it is a form of madness to suppose that this country's public service can or should function with second-rate expectations or mediocre talent and performance.

While we may seek to minimize the scope and depth of governmental intervention in our economy and our lives, the quality of public service in an increasingly complex and interdependent world will need to be higher, more skilled, and more thoughtful than ever before.

Second, I think the issue before us is not whether government should or will change the way it is managed; the issue is how quickly it will change and how dramatic that change will be.

Over the past year, much excellent work has been done on the changing work force, which all sectors of our society will confront in the years ahead. I commend to you the Workforce 2000 report of the Department of Labor and the Civil Service 2000 report of the Office of Personnel Management.

These two studies, combined with the excellent work of the Volcker Commission, have provided significant understanding of the nation's changing work force. Between now and the year 2000, government will face an even greater competition from the private and nonprofit sectors in recruiting and retaining highly-skilled workers. In order to compete, government must quickly respond to these challenges. The quality of public service in the future will depend upon how quickly and how well we are able to move our large ship of state.

I'd also like to take a minute to go beyond the necessary abstractions in discussing this topic which tend to put ordinary mortals and the media to sleep. What the Center's principals, members of the Volcker Commission, and this committee know from personal experience is that a job in the Federal Government can and should be challenging, exciting, and very hard work. And the demand for quality grows as our nation's problems get more complex and resources remain limited.

We simply must encourage the talented to seek, accept, remain, and remember with pride public service for either a short stint or a whole career. The importance of high quality public service cannot countenance another outcome; and it is with this objective in mind that the Volcker Commission sought to outline goals and steps to achieve a better future. The Center's own work suggests that those goals and specific steps to achieve them are not only needed, but practical and possible.

In outlining such goals and steps, it is all too easy to focus solely on compensation. Though we must talk about pay, much more than that is needed if we are to achieve the high quality public service the nation deserves. To do so requires not only adequate compensation, but factors such as a positive working environment, a clear set of responsibilities, and clear accountability.

That positive work environment includes: an increase in public trust, a willingness to delegate and decentralize, and a strong program to encourage quality recruitment.

My own experience suggests that the disillusionment of Vietnam and Watergate followed by yet other events set off a trend that moved us away from the positive environment we so badly need. The resulting suspicion of public managers has led to so many actions designed to keep them from doing it "wrong" that it has discouraged them from doing it at all.

The Volcker Commission recommended a number of important steps toward creating and maintaining the needed positive environment to stimulate excellence. For example, the Commission calls attention to the important role that the President and the Congress play in setting standards of performance and ethical conduct, as well as in promoting the importance and value of public service and public servants.

The Center strongly agrees. The strongest efforts of external groups such as the Commission, the Center for Excellence, the National Academy of Public Administration, and the American Society for Public Administration, and others, cannot overcome the negative impact of a President or a Congress if they choose to demean public service and public servants.

The fourth goal of the Commission calls for decentralizing government management. A more important objective to pursue over the next 5 years would be hard to find. There is no question that the Congress and the President must retain their constitutional roles to prescribe policy direction and audit performance. But within those important principles we must and can find the means to provide public managers with the resources and flexibility to use them to reach agreed upon objectives.

The improvements that must be made to reach a better solution include better articulation of agreed objectives, increased flexibility for the managers without overturning crucial due process protections, and a clearer accountability for outcomes as well as process.

It is my judgment, for example, that there could be an enormously important role for the Office of Personnel Management to play in fashioning a better approach to accountability for public managers—appointees and careerists alike—which focuses on outcomes.

Another aspect of the creation of a positive environment lies in a more positive and up-to-date approach to recruitment. Goals six through ten of the Volcker Commission final report deal with this topic in terms of increasing student interest, recruiting the best, opening new channels of communications, simplifying recruitment, and increasing minority representation.

Anyone who believe that we cannot interest young people in public service—that they have all become obsessed with Wall Street—simply haven't been on college campuses recently. As the Commission's report notes, the Center for Excellence—with the support of the Ford Foundation—has sent its principals onto college campuses to try to interest students in entering government for at least a portion of their careers.

I happened to participate in the program at Wake Forest University, where a number of us from the Center talked to students over three days in a program that they largely organized. Those three days were followed by a Federal job share to which over 50 departments and agencies sent representatives. More than 800 students from 25 colleges and universities in the region attended the job fair, and at least 200 of them were offered jobs. That experience and others should give us all some encouragement about the positive effect of concerted efforts to bring bright, young adults into government.

In addition to the various steps needed to be taken to create a positive work environment, the Volcker Commission enunciated an important set of goals about finding the right people for the job. The Center for Excellence, as the Commission report notes, has taken particular interest in improving the basis for selection of some of the key subcabinet positions through the publication of "The Prune Book," which we hope is but a first step for establishing some standards for the kinds of skills and experiences needed to do those crucial jobs.

We will soon be making available a volume called "A Survivor's Guide for Government Executives" which, we hope, will help new political appointees enter their new positions with fewer scratches and bruises.

The corollary to finding good appointees is finding and using good careerists, including using them in positions normally filled by political appointees. The most savvy political managers know instinctively how important it is to gain the support of the career staff in the pursuit of Administration objectives, and experienced political executives also know how easy that is to do if you work at it.

I think it is possible to define the real length of a transition period for a new administration as that period of time it takes for new appointees to discover how important, talented, and helpful career servants can be. As one who has served both as a careerist and as an appointee, I know how creative and productive those alliances can be.

In its efforts, The Center for Excellence in Government has emphasized the quality question for both appointees and careerists. It has and continues to be the key to getting excellence in government, regardless of the mix between them.

The Volcker Commission has, in addition, called attention to the quantitative balance and recommended an adjustment to fewer appointees in a move to put the balance where it was some time ago. We have no problems with that recommendation. If one just looked at the proliferation of special assistants and took some action to thin them out, we could reduce quite a few jobs with few adverse consequences. But I would like to give some emphasis to one part of the Commission's rationale.

The Commission notes that more political appointees do not mean better political control. My own experience bears that out. More appointees at lower levels or in special assistant roles may mute a clear direction from the top and add a confusion of voices with inconsistent ideas. In these circumstances, accountability gets lost.

Getting and keeping the right people means paying them enough to let the challenge and excitement of public service overcome the monetary attractions of alternative employment. I state the proposition in this fashion because it is not necessary or possible for government at the top to compete dollar-for-dollar with private alternatives.

On the other hand, the widening salary gap is a critical issue which must be addressed now. The alternatives to Federal employment are not just in the private sector; they are also public jobs at other levels of government. It does not, for example, seem rational to me to pay school superintendents more than we pay Federal cabinet officers, notwithstanding how important those education jobs are.

The Congress has obviously been through a painful period in recent months on the compensation issue. It does seem to the Center, however, that this issue cannot be set aside for long. There is an urgent, short-term need which must be addressed at least for the Judiciary and the Executive branch. Failure to act this year can have very adverse consequences for both recruitment and retention.

These consequences are difficult to measure because they are not measured primarily in quantity; they are measured in quality where it hurts the most. But one can see the evidence in the new stories about the resignations and retirement of senior Federal officials, and hear more informal accounts about the difficulty of recruiting seasoned managers for non-career posts.

I feel no less keenly that the Congress deserves a substantial pay raise, as well, and I went into public debates on the radio this last winter to say so. But if that problem is intractable in the short-run, I believe the Congress must deal with the issue for the other branches this year.

Beyond this short run need, we probably must reexamine the processes by which compensation is set for the longer run. The matter of Congressional compensation is at best perplexing, since no trouble-free process suggests itself—at least to me.

Indeed, there was to my mind much to commend the present Quadrennial Commission process which sought to insulate the Members from the apparent self-interest of dealing directly with their own pay; but the public at large seems to have limited sympathy with this approach at the moment.

Perhaps the practice of some State and local government, that is to vote a pay raise which takes effect after the next election, would work here, but I am anything but sure, and you as Members will no doubt have a better sense of that than most of the rest of us.

With respect to the top levels of the Executive Branch and members of the Judiciary, action needs to be taken in one, or perhaps two, phased steps to raise compensation to competitive levels, install an inflation adjustment mechanism which functions automatically, and subject these jobs to a periodic comparability review—perhaps every four or five years.

With respect to the general schedule positions, the Volcker Commission has offered some wise, if somewhat difficult, advice about which I have several comments.

First, based upon my observation for more than 23 years of Federal service and another decade in the private sector, I believe that the number of civil servants and their pay levels have been singled out for special budgetary treatment apart from all other resources in a way that has limited merit. No manager, public or private, would argue with the proposition that people are the most important resource, though managers in the private sector seem more committed to the proposition.

When it comes to public budgets, we are more inclined to set arbitrary limits on numbers of people or their compensation rather than figure out what programs we can afford, how to efficiently staff those programs, and what rate should be paid to get the needed talent. We should seek a process which puts the cost of needed talent in a better perspective, and I think the Volcker Commission points us in the right direction, with an approach similar to the wage board system with pay variation based on occupational skill and local labor markets.

Second, the clear trend in the private sector for all kinds of positions—professional included—is to set compensation based on regional surveys of the appropriate occupational groupings. This approach has the advantage of not only providing comparability, but also takes regional differences in living costs into account. Adopting this approach would pose some problems of concept and implementation, given the historical practices in the general schedule. However, the advantages appear strong enough to warrant careful consideration and use.

In conclusion, what we need now is the development of specific agendas for change. In the spirit of collaborative effort, it might be useful if the Office of Personnel Management and the departments and agencies initiated such planning and discussed it with Congressional committees such as this one in a set of innovative, informal hearings. By informal hearings, I mean by something other than a normal hearing where one party is seen to be clearly in charge. Instead, I would propose a more informal exchange about common problems amongst equals. Additionally, we need action from the Congress now to meet the short-term pay need.

Mr. Chairman, I thank you for the opportunity to appear, and Mr. Abramson and I will be glad to take any questions you may have.

Mr. McCloskey. Thank you very much, Mr. Morrill, and thank you for an excellent statement.

There is not too much that I can personally dispute in your statement. Can you cite any specific educational techniques concerning how to change public negative attitudes about government pay which we recently witnessed? I am concerned that, in the natural order of things, this negative public opinion clouds attempts to achieve good government through realistic compensation and the competitive approaches that you are suggesting. I don't see a lot of easy ways out, I guess.

Mr. MORRILL. In terms of the broad public understanding of some of the issues, Mr. Chairman, having, as I said in my statement, been on the radio discussing the pay raise on radio call-in shows, in opposition to Mr. Nader's point of view, that is a tough sell to the general public—particularly in some parts of the country not as familiar with the cost of living in this city and elsewhere.

I think that is a long-term process that inevitably starts at the top. I think we are fortunate that the nature of the rhetoric about running against the bureaucracy has abated starting with the last election and moved in a more positive direction, and that's going to help.

With respect to the education of the young, in an earlier session there was some dismay mentioned about whether we can turn kids around from talking about how much money they are going to make into thinking about what services they might do for themselves and their country. I think that is a much less hard program to undertake as I said.

With this experimental program we are now running, the young people are out there anxious to be retrieved and led. State and local government has known this all along and has made some recruiting use of it. I think the feds have just got to rediscover it and get out there and do something. That Wake Forest experience I think is an indication of how much you can do if you get yourself organized to go recruit on those campuses.

Mr. ABRAMSON. Could I add a point about that?

Mr. MCCLOSKEY. Sure.

Mr. ABRAMSON. The question is what you can do specifically as Congressmen? I was also on the radio supporting the pay raise for Members of Congress, the Judiciary, and Executive Branch, and the main focus of the people calling in was on Congress. It quickly became obvious to me that the public does not understand the job of the Congressman. They do not understand exactly what you do when you're not on the floor. They don't understand what you do when you go home.

There were a lot of comments about Congressmen not ever being here, and Congress being responsible for the budget problem. So I really came away from this experience thinking that each Congressman who does go home—that's part of your job—should take the opportunity to really explain what the job of the Congressman is. It is not a six-month a year job. There was a lot of talk that you're on vacation for six months.

Mr. MCCLOSKEY. That's what Dan Rather says: "They're off again, folks."

Mr. ABRAMSON. That's exactly right. And I tried to explain to the public when I was on the talk shows what you do when you do go home. You do go talk to them. You often hold hearings.

So I think on the Congress part of it, that Congressmen who are out there—the funny thing is that they are home and speaking all the time—can make part of their speech about the job of the Congressman and increase the public understanding.

I am one who thinks that the pay issue was mainly focused on Congress. I think there were problems that the public had with the members of the Executive Branch and Judiciary, but it was mainly Congress, and it was caused by a lack of understanding.

Mr. McCloskey. I'm glad you brought that up. I had an interesting experience. In fact, it is still going and I have got to meet the group again at 1:30. Just before this meeting I spent about an hour with 36 very bright high school students from Southern Indiana who are about to be in the finals in the national bicentennial competition on the Constitution and the Bill of Rights.

As they were going to the State finals three or four months ago I was at a rally to get them geared up to compete in Indianapolis. The teacher, Mr. Harris, did take a poll on the Congressional and Federal pay increases at the time, and I was informed in a somewhat bemused fashion that, to a person, every one of them was against the pay raise, which doesn't bother me. They are representative of my district, and to some degree you have to vote your district.

But today they are out here. Since then they have gone through three or four months of Constitutional and governmental and public policy training. I asked them about it today, and the general response was, "Well, we've now seen what a Congressman does, and you don't get enough money. People just don't realize what you're up against."

Not that they have tracked me that much, but they have tracked the process and they see the complexities of it now and they just seem to have totally turned around.

The only thing I can say—and this Constitutional national competitive forum they are in is a very serious education attempt. I think maybe there is a lot of hope. Maybe you're right on things like that.

Mr. Morrill. There is also, as a part of the Volcker Commission report and its recommendations concerning education, to try to do more in reviving civic education so that the broader understanding in society is improved about what this is all about. Too few have any idea.

Mr. McCloskey. We don't have to go on about this, but, as you know, Ralph Nader makes the arguments that at the top $89,000 is too much for Congressmen, Federal judges, Federal executives, that we have all this side income and these perks and so forth. I find these perks interesting. I really don't want to get a Congressional hair cut at any price. [Laughter.]

Mr. McCloskey. And these lavish—I have read about the lavish banquets that we have in the House dining facilities. Believe me, nothing against those good folks, but it is pretty bland.

But there is a tone out there, and somehow we have got to change it and have some more responsible, more balanced reporting, I think, to——

Mr. Abramson. I think that is exactly right, because that came up again in the talk shows. The public does not understand that your travel is part of your job. There is no understanding that "perques" are really legitimate business expenses in the private sector. So it really takes increased communication, both on the job of Congress, and also I think it takes an increased leadership among all branches of government to really speak out and explain to the public exactly what they do and that a pay raise is justified.

Mr. **McCloskey**. Thank you very much, gentlemen. Is there anything else you want to add?

[No response.]

Mr. **McCloskey**. Thank you for excellent testimony.

Mr. **Morrill**. You're welcome.

Mr. **Abramson**. Thank you so much.

Mr. **McCloskey**. We're going to a panel now of four persons: Ms. Carol A. Bonosaro, President of the Senior Executives Association; Mr. Bruce Moyer, Legislative Counsel to Federal Managers Association; Ms. Helene A. Benson, President, Professional Managers Association; and Chief Judge Victor W. Palmer of the Federal Administrative Law Judges Conference.

Good afternoon. Thank you for being here.

If you have formal statements, I will accept them for the committee. You may proceed as you see fit.

STATEMENT OF CAROL A. BONOSARO, PRESIDENT, SENIOR EXECUTIVES ASSOCIATION

Ms. **Bonosaro**. Good afternoon. Thank you for the opportunity to present the views of the Senior Executives Association. I will limit myself to a brief discussion of several of the points of concern from the perspective of career Federal executives.

First, the Commission has recommended that the President and the Congress must ensure that senior managers receive executive training to exercise their responsibilities effectively. But many of the entrants into the service come in as specialists and little broad management training is provided to them thereafter.

In addition, there are currently no requirements for career SES members to keep up to date in the fast-changing world of management, administration, or the technical requirements of their positions. This can result in the diminution of skills over time of those who are responsible for leading the government's most important programs.

Agencies are reluctant to let those attend training who are the best and the brightest because of the daily need for their expertise.

We think that this penny-wise and pound foolish attitude on behalf of agencies requires a legislatively- mandated solution.

What we recommend is that every member of the Senior Executive Service be required to attend a minimum of 40 hours of approved training each year in order to continue in the SES. Failure to complete such training by the end of each fiscal year would be grounds for removal of the individual from the SES and a finding of unsatisfactory placed on the evaluation of the supervisor of the employee so removed.

Likewise, the Commission has recommended that the OPM should help departments and agencies design clear career paths for advancement to senior executive positions and provide guidance in the kinds of executive development curricula and succession planning appropriate to future success.

We agree with the Commission regarding the general inadequacy of training and development of Federal career employees. There is, at present, little or no comprehensive career-length planning for the development and training of Federal civilian managers—particularly when you compare this with the advanced training provided military and foreign service officers.

To meet this training need, the Association has advocated and continues to advocate the establishment of a National Civil Service Academy to train promising Federal managers for further advancement in and into the SES. (See p. 650 for paper entitled, "Proposal for a National Civil Service Academy.")

The second point I would like to make is with regard to the question of numbers of political appointees. One way that we would suggest ameliorating the problem to some degree is to amend the Civil Service Reform Act with respect to the percentage limitation on non-career Senior Executive Service members—specifically, to apply the ten percent government-wide limitation and 25 percent agency limitation to filled positions, as opposed to authorized positions.

Given our agreement with the Commission's work in general, and, in most cases, in specific, I must point out, nonetheless, two cases in which we oppose the Commission's recommendations.

The first is with regard to the Volcker Commission's recommendation for reduction in the number of bonuses to be provided Senior Executives. We believe this recommendation goes in the wrong direction and would exacerbate the very evils it intends to cure. If followed, it would completely destroy whatever faith remains with SES members who were explicitly promised in order to gain their support for conversion in 1978 and 1979 greater rewards for greater risks. This recommendation addresses itself to abuses of the reward system and not to its substantive worth.

In addition, enactment of fairly decent salary increases will diminish the abuse problem markedly.

Our second area of disagreement is with the recommendation that the President create a separate track within the Senior Executive Service for generalist managers. In opposing this proposal, our view is that the SES was intended to provide not just managers, but a leadership cadre at the top of the career ladder in the Executive Branch. Leadership is broadly defined and springs from many sources. It is as important to have SES members who bring an economic, legal, or scientific background as an administrative one. This is not only pragmatic given the present composition of the SES, but sound public policy.

In creating an SES cadre of senior government employees with increased mobility and exposure across a broader spectrum of government responsibilities—I should say in attempting to create that—we face efforts such as these to fragment the SES, which efforts, in turn, will only restrict further our opportunities for mobility between agencies and functional specialties.

The need for comprehensive reform will not disappear if first one specific group or discipline and then another obtains special treatment. In addition, oversight and administration would become unwieldy, giving birth to an attendant proliferation of review boards and fractured, potentially chaotic management.

We believe this recommendation should be rejected for the reasons cited, and I would note, as well, that the 20th Century Task Force on the Senior Executive Service recommended that the SES maintain its current mix of generalists and specialists.

Finally, I could not urge the committee too strongly with regard to the importance of the Commission's recommendations to raise Executive, Judicial, and Legislative salaries to 1969 levels of purchasing power, to develop a process that will trigger needed increases in a more timely fashion, and to address separate recommendations for judges and top-level senior executives if Congress is still unable to act on its own salaries.

Daily, numbers of top SES career executives, not solely from NASA or NIH, but from DOD, IRS, the SEC, and other agencies, as well, are leaving the government because of inadequate pay. In the end, implementation of the other recommendations of the Volcker Commission will do little to meet the overall goals if we do not resolve the fundamental crisis, and that is compensation.

Thank you.

[The prepared statement follows:]

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Testimony of the

Senior Executives Association

before the

House Post Office and Civil Service Committee
on

The Recommendations of the
National Commission on the Public Service

Given by
Carol A. Bonosaro
President

May 2, 1989

The Senior Executives Association commends the committee for holding these hearings to focus national attention on the comprehensive recommendations of the National Commission on the Public Service. The Commission's report deserves the most serious consideration by the general public and, particularly, by both the President and the Congress since it addresses issues crucial to the health and effectiveness of the federal career service. We noted with pleasure that several Commission recommendations echo earlier SEA legislative proposals, several of which found expression in Representative Schroeder's proposed Excellence in Government Management Act of 1988.

The SEA was pleased to be one of the groups invited to provide input to the Commission's deliberations during the course of its work and appreciates the opportunity to appear before you today with regard to the Commission's recommendations. The SEA strongly supports the broad purpose of the Commission to rebuild "an effective, principled, and energetic public service" as a priority on the nation's agenda.

The SEA fully agrees with the remarks of Chairman Volker and Commission member Elmer Staats, at the public release of the report on April 25, that, after the Commission officially disbands in June, there must be a continuing follow-through and monitoring effort to ensure that the Commission recommendations are actually implemented.

Of the many recommendations in the report from the five Commission task forces, the Association would like to comment on a few which warranted our particular attention.

I. Leadership for Governance

Goal One: Rebuild The Public's Trust

Recommendation # 3:

> "The President and Congress should establish an independent advisory council, composed of members from the public and private sectors, to monitor the ongoing state of the career public service and make a bi-annual report to the President. In turn, the President should forward the report to Congress with his own comments and responses, including any recommendations for change that he may have."

Comment:

This recommendation was prepared by the Commission's Public Perception Task Force and was proposed, primarily, as a vehicle to monitor the implementation of the Commission's recommendations. Its mission, though advisory to the President and the Congress, would be one of support and oversight.

The Association enthusiastically supports this proposal. The SEA has long supported the objectives of the Civil Service Reform Act of 1978, which created the SES. Nevertheless, we believe that the entities the Reform Act put in place of the old Civil Service Commission (OPM, MSPB, Office of the Special Counsel) do not necessarily add up to the sum of its parts.

What continues to be missing is the role of monitoring and maintaining the health of the career civil service and merit system as a whole, and this the Commission's recommended "independent advisory council" would purport to do. The council, even though advisory, would be a broad-based, bi-partisan entity focusing attention on the entire public service. We need such an organization, for none of the existing organizations address this necessary function.

Goal Two: Improve the Presidential Appointments Process

Recommendation # 1:

> "The White House of Presidential Personnel should be given the resources and mandate to perform as an active recruiting agency for the President. To assist in this process, the President should direct the Office to develop qualification statements for all top positions, and make appointments based on those merits."

Comment:

The SEA would like to see this Office be provided with the capability to recommend to the President candidates who measure up to the substantive job qualifications (which the office would establish) for the presidentially appointed positions in the executive branch. Thus it would be able to offer to the President, for his selection, panels of candidates who would possess both political qualifications and substantive expertise. We believe that this attention to job qualification is necessary in light of the findings of the GAO "Report on the Senior Executive Service, Reasons Why Career Members Left in FY 1985," which indicated that 47% of the career SES surveyed left because of dissatisfaction with top management.

Goal Three: Make More Room Near The Top For Career Executives

Recommendation # 1:

> "The growth in recent years in the number of presidential appointees, whether those subject to Senate confirmation, noncareer senior executives, or personal and confidential assistants, should be curtailed. Although a reduction in the total number of presidential appointees must be based on a position assessment, the Commission is confident that a substantial cut is possible, and believes that a cut from the current 3,000 to no more than 2,000 is a reasonable target."

Comment:

The SEA supports some reduction in the number of presently allowed political appointees (as defined) though not necessarily the number advocated. The practical achievability of a substantial reduction of political appointees (500 or more) is doubtful with either party.

Recommendation # 2:

> "The President should more frequently consider career officials for subcabinet appointments, taking advantage of a prime source of professionalism and experience to his or her Administration."

Comment:

The SEA supports the recommendation of the Commission that the President and his agency heads fill more executive and managerial positions at the Deputy Assistant Secretary level and below with qualified career employees.

The number of conversions of executive positions traditionally held by careerists to political, at the Deputy Assistant Secretary level and below, combined with the increase in the absolute numbers of political employees in the executive branch in the last three decades has had adverse effects. It drives away bright, would-be candidates for the federal service, who see career ladders to key executive positions dead-ending at lower levels because the top positions are now political. Likewise, career executives with long-time federal service, who have trained for these top positions, are blocked from consideration because the positions are now occupied by political appointees. As a consequence, the government loses the expertise, experience, and institutional memory of these career executives who choose resignation or early retirement, out of frustration.

Recommendation # 3:

> "The President and Congress should set a lower limit on the number of non-career senior executives allowed within a particular department or agency. Current law permits up to 25 percent of an agency's senior executives to be noncareer appointees, thereby crowding out opportunities for career officers."

Comment:

More scrutiny should be given by OPM to an agency's non-career SES positions before it approves them. We agree with the Commission that allocation by OPM of these non-career positions to an agency should be determined by whether they are necessary because the incumbent would play a policy making role or be an advocate of administration policies. If not, they should be denied.

Furthermore, SEA believes a more realistic and more relevant restriction should be enacted, applying the present 25% agency, and the 10% government-wide, limitation to the number of filled positions. This is a stricter requirement than the current one of allocated positions since a serious imbalance can result when a substantial number of career positions are left vacant.

Goal Four: Decentralize Government Management

Recommendation # 2:

> "In decentralizing administrative authority and flexibility, the President and the Congress must ensure that senior managers receive the executive training to exercise their responsibilities effectively."

Comment:

The Commission's Education and Training Task Force has noted, accurately, the weaknesses in the federal government's whole approach to management training. With regard to the SES, many of the entrants into the Service come in as specialists and little broad management training is provided to them thereafter.

In addition, there are currently no requirements for either career or non-career SES members to keep up to date in the fast changing world of management, administration, or the technical requirements of their position. This can result in the diminution of the skills over time of those who are responsible for leading the government's most important programs. Agencies are most reluctant to let attend training those who are the "best and brightest" because of the agency's daily need for their expertise. This "penny wise and pound foolish" attitude on behalf of agencies requires a legislatively mandated solution.

The SEA recommends that every member of the Senior Executive Service be required to attend a minimum of 40 hours of OPM/agency approved training each year in order to continue in the SES. Failure to complete such training by the end of each fiscal year would be grounds for removal of the individual from the SES and a finding of unsatisfactory placed on the evaluation of the supervisor of the employee so removed.

Goal Fourteen: Provide The Training To Succeed
Recommendation # 2:

> "The OPM should help departments and agencies design clear career paths for advancement to senior executive positions, and provide guidance on the kinds of executive development curricula and succession planning appropriate to future success."

Comment:

Both goal four (recommendation 2) and goal fourteen (recommendation 2) are considered as one for purposes of this comment. The SEA agrees with the Commission regarding the general inadequacy of training and development for federal career employees, particularly for federal executives. There is, at present, little or no comprehensive, career length planning for the development and training of federal civilian managers, particularly as compared with the advanced training provided military and Foreign Service officers. What training that currently exists is piecemeal, is lacking in direction, is largely agency-specific in content and is often too little and too late. The absence of broadly available, advanced training opportunities has been left to chance and on-the-job experience. The opportunity for most potential senior managers to acquire the skills and discipline of sound management has been absent.

To meet this training need, the SEA has advocated and continues to advocate the establishment of a National Civil Service Academy to train promising federal managers for further advancement in and into the SES (attachment A).

Some version of this proposal would provide the training sometimes needed to transform specialists already in the SES into SES specialist-managers, that is, managers who supervise such specialists as scientists and engineers.

We agree with the Commission that, after the broad mid-level managers common training suggested by the National Academy concept, agencies should be encouraged to develop their own programs to meet specific agency needs.

Goal Five: Strengthen The Presidential Career Partnership

Recommendation # 1:

> "All presidential appointees must receive adequate orientation to office."

Comment:

Given the relatively short tenure in office of most presidential appointees, their limited prior government experience, and the increased emphasis on standards of conduct and ethics in government, it is absolutely essential that all appointees receive comprehensive orientation and training on the ethical and legal responsibilities of their job assignments.

Goal Eleven: Provide Competitive Pay and Demand Competitive Performance

Recommendation # 1:

> "The Commission recommends action to raise executive, judicial and legislative salaries to 1969 levels of purchasing power."

Recommendation # 4:

> "Once purchasing power is restored to 1969 levels, the Commission recommends development of a process that will trigger needed increases in a more timely fashion."

Recommendation # 5:

> "If Congress is still unable to act on its own salaries, the Commission recommends that the President make separate recommendations for judges and top-level senior executives along the lines proposed and that the Congress act promptly upon these recommendations."

Comment:

The SEA believes strongly in the need for legislative action in this session of the Congress to address the need to restore the loss of purchasing power for members of Congress, the Judiciary, and top political and career SES and supergrade equivalent executives in the Executive Branch.

Daily, numbers of top SES career executives - not solely from NASA, but from DoD, IRS, the SEC, and other agencies, as well - are leaving the government because of inadequate pay. In the end, implementation of the other recommendations of the Commission will do little to meet the overall goals if we do not resolve the fundamental crisis - compensation.

If the congressional leadership continues to believe the time is not right to seek a significant increase for the legislative branch this session, the SEA recommends that the Congress enact this session, a 30% salary increase for the executive and judicial branches alone.

Goal Thirteen: Increase Government Productivity

Recommendation # 1:

> "In conjunction with the pay increases recommended above, the number of senior executives currently eligible for annual bonuses should be reduced by half to ensure that performance bonuses are only used as bonuses, not as hidden salary increases, and to concentrate scarce budget resources on the highest performers."

Comment:

SEA opposes this recommendation as it goes in the wrong direction and would exacerbate the very evils it intends to cure. If followed, it would completely destroy whatever faith remains with SES members who were explicitly promised, in 1978-79 in order to gain their support for conversion, "greater rewards for greater risks." In addition, this proposal goes in a direction opposite to private industry practice. The outstanding corporations generally provide bonuses for up to 90% (again based on relative performance) of their executive workforce.

This recommendation addresses itself to abuses of the reward system and not to its substantive worth. In addition, enactment of fairly decent salary increases will diminish the abuse problem markedly.

Goal Twelve: Strengthen The Government's Personnel Agency

Recommendation # 1:

> "The President should highlight the important role of the OPM by sustained contact with its Director and by ensuring participation by the Director in cabinet-level discussions on human resource management issues. The Commission further recommends that OPM's current operating responsibilities-e.g., specialized training, approval of routine personnel decisions--should be decentralized to the federal departments and agencies."

Recommendation # 2:

> "The number of politically appointed managers inside OPM should be significantly reduced."

Comment:

The SEA agrees with both recommendations. Much of the damage to the integrity and professionalism of OPM which has occurred in the past can be overcome by strong, substantive leadership at the Director level in OPM and recognition by the Administration that it looks primarily to the OPM for such work force expertise and advice.

The measures of success for the OPM of the future are the degree to which it plans and acts like the President's policy manager of the human resources in the executive branch, how thoroughly and consistently it performs its oversight and evaluation functions with the departments and agencies, and how well it anticipates and accommodates to the changing composition of the federal work force of the year 2,000 and beyond.

Goal Fourteen: Provide The Training To Succeed

Recommendation # 1:

> "The OPM and the nation's schools of public affairs should work together to define the skills needed by today's public executives. In addition, to recognize the importance of management as a distinctive skill, the President should create a separate track within the Senior Executive Service for generalist managers."

Comment:

SEA supports the first part of this recommendation, with the understanding that OPM and the nation's schools of public affairs may not be the only institutions or sources to define the skills needed by today's public executives. The government should be open to other sources as well.

We oppose the second segment of this recommendation, which advocates a separate track within the SES for generalist managers.

Our view is that the SES was intended to provide not just managers, but a leadership cadre at the top of the career ladder in the executive branch. Leadership is broadly defined and springs from many sources. It is as important to have SES members who bring an economics, legal, or scientific background, as an administrative one; a mix, in other words. This is not only pragmatic, given the present composition of the SES, but sound public policy.

In striving to create such an SES cadre of senior government employees with increased mobility and exposure across a broader spectrum of government responsibilities, we face efforts to fragment the SES. These efforts, in turn, will only restrict further our opportunities for mobility between agencies and functional specialties.

The need for comprehensive reform will not disappear if first one specific group or discipline, and then another, obtain special treatment. In addition, oversight and administration would become unwieldy or impossible, giving birth to an attendant proliferation of review boards and fractured, potentially chaotic management.

The SEA urges, therefore, that this recommendation be rejected for the reasons cited.

Thank you, Mr. Chairman, for the opportunity to express our views on the recommendations of the National Commission on the Public Service. The Association pledges, along with the institutional and individual friends and supporters of the Commission, to continue to apply ourselves to the realization of the Commission's goals.

STATEMENT OF BRUCE MOYER, LEGISLATIVE COUNSEL, FEDERAL MANAGERS ASSOCIATION

Mr. MOYER. My name is Bruce Moyer. I am Legislative Counsel of the Federal Managers Association.

In view of the time constraints, Mr. McCloskey, we would ask that our statement be accepted into the record and I will attempt to highlight the four most major points of our testimony. They deal with the subjects of leadership and ethics, personnel management, pay, and education and training.

Overall, the Federal Managers Association believes the Commission has done an excellent job in terms of its assessment of the current state of health of the civil service and in terms of framing an agenda for change.

We support the major recommendations of the report and have worked with the Commission over the course of the last two years of its life in assisting in several ways. We hope to play a role in the implementation of some of its recommendations.

On the matter of leadership and ethics, we are very much concerned about a growing perception among those who labor daily under the flag of the Federal Government that perceive the Federal Government as a less trustworthy or less reliable employer.

The state of lack of respectful pay increases over the course of the last several years, the matter of freezes and cuts in retirement benefits for Federal retirees as compared to Social Security recipients, the latest proposals of the Bush Administration with regard to cutbacks—particularly on the lump sum retirement option—has created a great amount of anxiety among the Federal work force, but particularly among our membership—folks, many of whom are eligible for retirement. If the lump sum is repealed, they will walk out the door. And we're looking at the prospect of a fairly major exodus in that regard.

Just yesterday our national president, who is down in San Antonio at Kelly Air Force Base, was told that of 1,200 managers and supervisors who are eligible for retirement, 400 of them have submitted their papers with the condition that if the lump sum is repealed, they are out the door. That is one third of the supervisory and managerial work force there at a major defense installation.

That kind of lack of support of the Federal work force is troubling not only in the short term, but also in the long term. We are most appreciative of your efforts, Mr. McCloskey, and those of the chairman, in this regard, and we continue to support your efforts in preserving that type of foundation which is necessary for continued trust and support in the Federal Government by its workers as a reliable employer.

In the area of personnel management, we are most supportive of this notion of decentralization of certain personnel authorities that will allow managers more capacity, greater flexibility to manage in the areas that have already been mentioned earlier this morning: in the areas of recruitment, hiring, being able to have a greater share of risk taking, the notion of encouraging innovation and flexibility.

The third area I'd like to comment upon is in this area of pay, which, of course, has probably absorbed the greatest amount of attention, despite whatever kind of caveats Mr. Volcker may have stated in terms of the breadth of their report. Certainly the area of pay has been the foremost item on most people's list.

We were most pleased to see that within the Commission's report, in terms of top level salaries and that of Congress, an incremental approach to increase pay. This is consistent with the proposal that the Federal Managers Association made to the Federal Advisory Committee on Pay last year. The foremost recommendation they sent on to the President was that the only way this comparability gap between the federal work force and the private sector can be narrowed is by doing it over a period of 5 to 7 years.

What we are saying is: look at it in the way of a 7 to 8 percent pay increase per year, assuming inflation at the rate of 3 to 4 percent. That, in a five- to seven-year time, could zero out a comparability gap. A 51 percent pay increase has such political problems attached to it that a more incremental approach to it over time, we believe, would satisfy and resolve the problem.

On the matter of locality pay, we have not yet reached a definitive position on this as an association. Certainly many of our members are covered under the federal wage system, which the Volcker Commission has adopted as a model for application to the general schedule.

One problem that we immediately have with that approach is this notion of capping. Capping occurs by limiting the amount of the pay increase to those under a blue collar wage schedule to that increase given to folks under the white collar or general schedule. This has created a disparity among those under the federal wage system of anywhere between, on average, 12 percent and, in some areas, up to 25 percent.

So any approach toward locality pay has got to put the greatest deterrent upon the capacity to cap pay. Unless that is done, it will result in a further undermining of credibility and support for the approach.

In terms of merit pay, we had some problems with the Commission's recommendations at it applied both to members in the Senior Executive Service——

Mr. **McCloskey**. Mr. Moyer, if I could interrupt, could you go over that last chain of thought for a minute about the cap in pay? I'm not sure I got the point, quite frankly.

Mr. **Moyer**. Yes. The federal wage system is broken down into 135 different geographic areas around the country. The wages in each area are tied to the private sector counterpart, depending upon the occupational category. For example, the wages of an engineer in Oklahoma City working for the Air Force in a blue collar occupation are tied to whatever that similar occupational category would be earning in the private sector.

Now, if the private sector wages have increased seven percent during the past year, unfortunately the increase has not translated into an equivalent increase for those under the blue collar system. That is because their raise has been capped by what the general schedule raise has been for the past year: 4.1 percent.

Well that, over time, unfortunately has resulted in disparity between public and private sector wages, and the Commission pointed out that shortcoming in its report. You will not achieve the real intent of a local market wage system so long as capping is allowed to continue to occur.

Quickly, on the matter of merit——

Mr. McCLOSKEY. It does make for a fantastic complex budgetary allocation process though, to correct the problem that you're talking about.

Mr. MOYER. That's——

Mr. McCLOSKEY. If you're going to correct it every year, in effect.

Mr. MOYER. Right. There certainly are administrative problems, but if we are going to engage in a process over the next year or so in an intensive look at the concept of locality-based pay, there has got to be some understanding of why it is not working in the blue collar wage system where it is great in theory, but you're finding pockets of disenchantment with it when there is that kind of cap. The Commission held it out as kind of solution that we ought to be looking at, but there is a big problem so long as capping continues to occur.

On merit pay, earlier Ray Kline commented in his testimony on behalf of the Academy on the notion that there has got to be an increasing recognition of the fact that 98 percent of those within the merit pay system are performing satisfactorily, and that merit pay, in order to work, ought to increase self-esteem and commitment to the job.

We support that kind of thrust 100 percent because, unfortunately, the merit pay system, as it is now working, is having just the reverse effect: it is undermining employee commitment to the system. Those who are in merit pay would rather get out of it because those who are in the general schedule are actually faring better.

The Commission spent a moderate amount of time in exploring the merit pay area and commented upon the need for greater simplification, a greater amount of understandability of the system. We are wholly supportive of that notion and are certainly looking forward to working with the committee in the next several months in developing a merit pay system that improves upon the shortcomings of the present system particularly since merit pay will sunset at the end of this fiscal year.

Finally, in the area of education and training, we agree with the Commission that there is a significant gap between the needs and resources that has adversely affected the amount of training that is available to federal managers.

The first things that are cut in agency budgets are usually training and travel. To that end, we are most concerned about the long-range implications of continual cuts in training.

Recognizing the need for a greater amount of professionalism among the managerial work force, two years ago the Federal Managers Association established the Federal Management Institute. In that brief time it has, in cooperation with the Washington campus of the University of Southern California, established a certification program for federal managers, a star grant program that provides financial incentives to managers to go for degree work, and a management journal devoted to the discussion of timely issues and trends. With your permission, we'd like to submit some materials for inclusion in the record to better explain and amplify upon the work of our association.

Mr. **McCloskey**. Without objection, as I said previously, everyone's formal statement has been accepted for the record.

Mr. **Moyer**. Thank you.

Last, Mr. McCloskey, I'd like to also underscore a comment that has been previously made this morning about the danger of self-fulfilling prophecy. A balanced approach toward this examination of the problems of the federal services should occur, while recognizing that there are lots of warts with the system as it currently exists. The fact that is there are still many, many outstanding federal employees who day after day strive to do the best job possible. Their patience is being tested by the demands that are continually being placed upon them, both in terms of budget constraints as well as respect by the public at large. Hopefully we will recognize that kind of commitment, balanced with the problems in the system, so that those whom we are trying to attract into the system, particularly folks coming out of college, are not turned off by the perception of the government as an unattractive employer.

That concludes my remarks.

Mr. **McCloskey**. Thank you, Mr Moyer.

[The prepared statement follows. The materials which were submitted to explain and amplify the work of the association were retained in the hearing file.]

STATEMENT OF

BRUCE L. MOYER

LEGISLATIVE COUNSEL

FEDERAL MANAGERS ASSOCIATION

Thank you for the opportunity to be here today to express the views of the Federal Managers Association on the report of the National Commission on the Public Service. Let me also express our gratitude to you, Mr. Chairman, for initiating this series of hearings aimed at heightening public interest in the question of how our nation's public service can be strengthened and improved.

The Commission has done an excellent job, we believe, in framing an agenda and articulating goals for a more effective, principled, and dynamic civil service. The Federal Managers Association supports the major elements of the report and many of its recommendations. During the past two years the Federal Managers Association has promoted the work of the Commission in several ways. I personally had the honor of serving on the Commission's Public Perceptions Task Force Report Team and contributing to recommendations contained in the report of the Public Perceptions Task Force. In addition, the upcoming spring issue of our Federal Managers Quarterly will feature a cover story on the Commission, including a piece by Paul Volcker and an interview with Bruce Laingen, the Commission's Executive Director.

With the issuance of the Commission's report, new challenges await us. We are convinced that the stakes are too high, the demands too great, to allow this Commission's report to become relegated to the bookshelfs of our libraries and offices. The report sheds light on a crisis that can no longer remain quiet. In the coming weeks, leaders of the Federal Managers Association will more intensively study and reflect on the report, finding ways to visibly integrate its recommendations into the activity of our nearly 150 chapters throughout the country and the world. At the same time, our association will promote those statutory and regulatory-related recommendations that, we believe, will improve the vitality and credibility of our civil service and this nation's well being.

This morning, I'd like to devote our observations to several themes and specific recommendations of the report that bear the greatest relevance to and impact upon those responsible for the management and supervision of Federal programs and activities.

Leadership and Ethics

The Commission is absolutely right in urging that efforts to rebuild the public's trust must start at the top levels of government. Public cynicism in government is reaching widespread proportions. To halt and reverse this trend, government leaders must be supportive of a quality civil service and insist on the highest performance and ethical conduct--both through their words and actions.

There has been a disturbing trend by many top officials of failing to remain sufficiently attentive to the concerns of ethics, accountability, and credibility. The American people and three million Federal employees throughout the chain of command are understandably inspired or disenchanted by the actions of their leaders.

Three million Government employees cannot, by themselves reverse the public's perception of government as a less trustworthy, less credible institution. Yes, Government employees have a significant part to play in that process, but their commitment to the task is measured by their own perception of the Government as an employer. And that perception is fast becoming one that regards Government as an unreliable employer.

Pay increases for Federal employees for twelve years in a row have been less than private sector workers received for comparable jobs.. Freezes and cuts in retirement benefits have hit Federal retirees, while Social Security benefits have remained untouched. The latest proposals of the Bush Administration concerning repeal of the lump sum retirement option have created widespread anxiety, even panic, among Government workers, including many of our association's own members who are eligible for retirement.

Despite your efforts toward preserving the lump sum option, Mr. Chairman, our anecdotal evidence at this point reflects an unusually high number of Government managers and supervisors who have left or intend to leave Government service this spring due to the tenuousness of preservation of the lump sum benefit. Many of them have told us they are

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c changes, even at times retroactively.

At the same time, Government managers and supervisors are burdened with increasingly restrictive ethics rules. Recent rules by the Office of Federal Procurement Policy have triggered doubts by some of our members as to whether or not they should remain in public service. This represents overkill to the point that there is a disincentive upon the part of those in government to remain and disinterest by those with great potential to join the government and serve.

Personnel Management

We favor the greater delegation of personnel authority by the Office of Personnel Management to agencies to allow them and their managers to administer their responsibilities more flexibly and efficiently. Authority that allows agencies to more effectively recruit, pay and train their employees in accordance with management needs is desirable. Such delegation, accompanied by OPM government-wide objectives and standards of accountability, would be consistent with the objectives of the Civil Service Reform Act.

If we are to make public service an exemplary undertaking, we agree with the Commission's Task Force Report on Recruitment and Retention that we should encourage individual authority and innovation and remove unnecessary procedural constraints on managerial capacity. As the Task Force noted, our aim should be to create a system that rewards excellence and commitment, and does not reward only longevity or survival.

Pay

We agree with the Commission that meaningful increases in Federal pay must be achieved at all levels if the Federal Government is to attract and retain a quality workforce in the future. The Commission's call for an incremental approach to increase pay for top level officials is consistent with FMA's plan for achieving private-sector/Federal sector comparability for the rest of the workforce.

If we as a nation truly believe that the Federal government ought to attract and retain the best men and women possible into public service, then we must be willing to pay for it. In view of deficit pressures, FMA proposes that we eliminate the comparability gap by 1995. Our plan would provide for an 8 percent annual increase in Federal pay from 1989 to 1995, assuming annual growth of private sector salaries at 3-4 percent per year. The President's Advisory Committee on Federal Pay concurred with our plan and adopted the approach in its 1988 report to the President. This reasonable and pragmatic approach, we believe, would be equally applicable--and more politically feasible--to the Congress, judiciary, and top government officials.

Locality Pay

The Commission has recommended changing the process for making comparability adjustments to white-collar pay by scrapping the General Schedule and moving to a system that uses comparability adjustments based on the relevant local labor market. Under the approach outlined by the Commission, such a locality pay system would be modeled after the Federal Wage System that governs pay for the nation's 400,000 blue-collar workers. The FWS covers more than 400 occupations in 135 wage areas and responds to labor market differences in locations and occupations. The Commission believes that movement to a locality-based approach would attain private-sector/Federal-sector comparability to a fairer and more effective degree.

We as an association have not yet reached a final position on the merits of a locality pay approach for white-collar pay. Many of our blue-collar members are covered by the Federal Wage System, and we will be surveying their reactions to the system in the coming months and will make our data available to the committee.

In the meantime, it is abundantly clear that the confidence of our membership in the Federal Wage System has been undermined during the last ten years by the "capping" of survey adjustments for wage areas. Since 1978, FWS wage adjustments have not been allowed to exceed General Schedule increases. This has resulted in comparability distortions averaging 12 percent nationwide, as the Commission has acknowledged, and in some areas, as much as nearly 25 percent. It is critical, we believe, that any use of locality pay as an alternative to the General Schedule must prohibit the capping of prevailing rate increases to the greatest extent possible.

Whatever approach ultimately is adopted to achieve improvements in Federal pay, we believe it will be extremely difficult to implement such changes on a "budget neutral" basis, as the Commission recommends. Agencies across-the-board cannot continually absorb the costs of all pay and benefit increases.

Merit Pay

We disagree with the Commission's recommendation that the number of senior executives eligible for annual bonuses be cut in half so that the bonuses would be used to reward the highest performers. The Commission believes that, because of inadequate salaries, the current system encourages using the bonus system as a supplement to salary, rather than as a reward for outstanding performance. Current law allows up to 3 percent of an agency's SES payroll to be used for bonuses with no limit on the number who can receive them. We see no reason for imposing an arbitrary limit on the number of bonus recipients.

As to merit pay for mid-level managers, we agree wholeheartedly with the report of the Commission's Task Force on Recruitment and Retention, which recommends that the performance evaluation process be simplified. We favor the reform of the government's merit pay system to deter performance evaluations from being "driven" by the size of the merit pay money pool. Such a system should use no more than 2-3 levels of performance ranking, rely on supervisory evaluation for the award of comparability adjustments and peer review for the award of performance bonuses, and increase the minimum dollar size of the merit pay pool.

Education and Training

We agree with the Commission that there is a significant gap between the needs and resources for preparation and in-service training of those committed to careers in government service. Too often Government agencies spend far too little on training of all kinds and concentrate their efforts on meeting narrow, short-term needs. We believe the Commission was right on target when it stated, "The area of greatest concern is the plainly inadequate attention paid to the development of management and executive leadership in the civil service."

FMA has long recognized this problem and, in 1987 created the Federal Management Institute, a non-profit, educational/research organization to educate and train those who supervise Federal programs and activities. Thus far,

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the FMI has established: a certification program for Federal managers, the Service to America Recognition (STAR) Grant Program, a management journal devoted to the discussion of timely issues and trends, and educational programs. FMI has been joined in its endeavors by the University of Southern California, School of Public Administration's Washington Public Affairs Center. This affirms one of the Commission's requests for greater collaboration between the university community and government training programs.

This concludes my prepared statement. I will be pleased to answer any questions the Committee may have.

STATEMENT OF HELENE A. BENSON, PRESIDENT, PROFESSIONAL MANAGERS ASSOCIATION

Ms. BENSON. Mr. Chairman and members of the committee, thank you for the opportunity to present the views of the Professional Managers Association on the recommendations of the Commission.

PMA, which is a national association of PMRS managers, has long been concerned about what has been termed the "quiet crisis" in government. The Commission well documents the problems in government today, and has made numerous recommendations to reverse present trends.

PMA agrees with most of the recommendations of the Commission.

It has taken 12 years or so of federal employee bashing, as well as continual erosion of federal pay and benefits and other problems, to get ourselves in the situation we are in now. We feel it is going to take a lot more than mere statements supportive of the public service—although those statements are important—to correct the situation.

We think that concrete, specific action is required, and only the President and the Congress can take the actions necessary to resolve these problems.

First, on the subject of federal pay, no matter how federal pay is measured, the value of federal pay has declined with respect to both increases in the cost of living and private sector pay rates. The situation can't be allowed to continue.

Reasonable pay at all levels for the federal work force is necessary for the government to recruit and retain a satisfactory work force. PMA supports the Commission's recommendations for pay at the top and at the SES levels.

The Commission believes that the established procedures for adjusting pay in the GS have not worked and recommends that GS pay rates be established on a locality basis as opposed to the existing national pay scale.

PMA is not ready to either support or oppose locality pay without further studying the issue. We can see problems in applying locality pay to geographically mobile professionals and managers. At any rate, whatever system is adopted, it is clear that higher pay is urgently needed at the professional and managerial levels.

We are concerned, regardless of the system adopted for establishing and adjusting pay, that federal retirement be based on the entire amount of an employee's pay, without excluding locality pay differentials or locality cost-of-living differentials unless these same differentials are added to retiree's annuities.

Early in the hearing——

Mr. MCCLOSKEY. Could you state that again, Ms. Benson? That's one of the things that is the most interesting.

Ms. BENSON. We are concerned that the federal retirement be based on the entire salary of the employee, including locality pay—that the locality pay not be excluded for retirement purposes.

Mr. MCCLOSKEY. Regardless of where they retire?

Ms. BENSON. We know there can be problems with that. That's why there are problems with locality pay. But unless retirees are given differentials—for example, Congressman Ford talked earlier in the hearings about people retiring in North Carolina.—well, I was born and raised in Washington, D.C., and I want to retire in Washington, D.C. I don't want to retire in North Carolina. And if only part of my pay is——

Mr. McCloskey. But if you did retire in North Carolina, you make that choice.

Ms. Benson. Well, I don't want only a portion of my pay to be counted towards retirement, because I won't be able to retire where I worked, and I don't think federal employees should have to move when they retire, but they won't be able to retire where they work if part of their pay is excluded for computing retirement.

Mr. McCloskey. We're missing something here. Say you get locality pay or whatever—say for the New York City metropolitan area, okay?

Ms. Benson. All right.

Mr. McCloskey. And you retire in Buzzard's Vista, North Carolina, where there is the second lowest cost of living in the United States. Should your retirement be based on where you ultimately land? Could you see a system of variable retirement rates for similar service depending on whether you move from Seattle to Buzzard's Vista or——

Ms. Benson. You could give the differentials to retirees based on where they are living if you want to, just so, if you're not going to give federal employees their retirement based on their entire pay, that there would then be differentials added to retiree's annuities accounts based on where they live, so that they are not forced to move after retirement from where they worked.

Mr. McCloskey. I understand that. Yes.

Ms. Benson. So one way or the other there will be some——

Mr. McCloskey. Right. Move it up or move it down depending on the cost of living in a locality.

Ms. Benson. You could do that.

Mr. McCloskey. Okay.

Ms. Benson. One way or the other.

In addition to lagging behind private sector employees in pay, federal employee benefits in many instances are behind private sector benefits—for example, health benefits. So attention has to be paid to the federal employee benefit portion of the compensation package as well as to federal pay.

PMA does not agree with the Commission that a substantial portion of the cost of improving federal pay can be absorbed through existing personnel accounts. We don't believe it is practical to expect pay reform to be budget neutral.

Before leaving the discussion of pay, PMA would like to recommend, as it has before, that there be a supervisory differential paid to PMRS managers supervising more than one employee. Currently a GM–14 manager of a division can be receiving the same pay as a GS–14 professional with no supervisory responsibilities.

The Commission's task force on education and training and the task force on recruitment and retention emphasized the inadequate attention paid to the development of management and executive leadership in the Civil Service.

As the Commission task force reports, with some notable exceptions such as the IRS, agencies have all too often not taken the development of their own people seriously. The government agencies generally spend far too little on training of all kind.

We agree with the task force on education and training recommendation that the Comptroller General's standard for government audit employees of 80 hours of continuing professional education every two years be extended to all civil service professionals.

We would also recommend that managers be required to complete at least 80 hours of management/executive training every two years.

The Commission recommends that the number of Senior Executives currently eligible for annual bonuses be reduced by half to ensure that performance bonuses are used only as bonuses, not as hidden salary increases, and to concentrate scarce budget resources on the higher performers.

The Commission's task force on recruitment and retention made a similar recommendation with respect to PMRS bonuses. PMA disagrees with these recommendations. We see no reason to impose a limit on the number of bonus recipients. We believe that the decisions on the number of bonuses should go the other way—be expanded rather than lessened.

Bonuses are part of the performance appraisal system, and that entire subject involves a host of problems that need correcting for PMRS managers and is responsible for much of the low morale suffered by federal mid-level managers.

We expect to be working with the committee on this subject since PMRS sunsets this September.

We disagree with the Commission's recommendation to grant severance pay to Presidential appointees at the end of their service. Those appointees serve fewer than two years on average and they know their appointments are short-term when they accept them.

We agree with the Commission's goal to recruit the best graduates for public service. The Commission's recommendations to establish a Presidential public service scholarship program for 1,000 college students each year in return for a determined number of years of government service is interesting; however, if the recipients of the scholarships do not remain in federal service after completing their service requirement, we will not have accomplished the goal of the program, despite considerable expense.

Recruiting the best graduates will not remain a problem if civil service pay and image problems are corrected, the recruitment process is streamlined, and the employment experiences of recent graduates with the Federal Government are challenging and exciting.

PMA will be happy to work with your and your staff to implement the Commission's recommendations

Mr. McCloskey. Thank you, Ms. Benson.

[The prepared statement follows:]

Presented by
Helene A. Benson
President, Professional Managers Association

Mr. Chairman and members of the Committee, thank you for the opportunity to present the views of the Professional Managers Association on the recommendations of the National Commission on the Public Service.

The Professional Managers Association (PMA), an association of Federal PMRS managers, is deeply concerned about what has been termed the "quiet crisis" in Government -- the erosion in morale across the U.S. Government, resulting in many talented public servants either leaving or wanting to leave Federal Service, and too few of our young people considering Government service as a career. The result, if present trends continue, will be an America with a government of the mediocre. There is virtually no disagreement that the problems highlighted by the Commission's report exist.

The National Commission on the Public Service has made numerous recommendations to reverse this trend so that the U.S. can enter the next century with a public service capable of meeting the complex challenges facing us.

PMA agrees with the thrust of most of the Commission's recommendations.

It has taken 12 or so years of Federal employee bashing as well as continued erosion of Federal pay and benefits, and breakdowns in other areas, well documented by the Commission, to get the Government in this situation and it is going to take time and concrete, specific actions -- a lot more than mere statements supportive of public servants, though such statements are important -- to turn this situation around. Only the President and the Congress can take the specific actions needed to resolve the problems.

First, on the subject of Federal pay, no matter how Federal pay is measured, the value of Federal pay has declined, in respect to both increases in the cost of living and private-sector pay rates. The situation cannot be allowed to continue. Reasonable pay at all levels of the Federal workforce are necessary for the Government to recruit and retain a satisfactory workforce. PMA supports the Commission's recommendations for pay at the top and at the SES levels.

The Commission believes that the established procedures for adjusting pay have not worked and recommends that GS pay rates be established on a locality basis, as opposed to the existing national pay scale. PMA is not ready to either support or oppose locality pay without further studying the issues. We can see problems in applying locality pay to geographically mobile professionals and managers. At any rate, whatever system is adopted, it is clear that higher pay is urgently needed, certainly at the professional and managerial levels. PMA is concerned, regardless of the system devised for establishing and adjusting pay, that Federal retirement be based on the entire amount of an employee's pay, without excluding locality pay differentials/locality cost-of-living differentials, etc. (unless those same differentials are added to retirees' annuities).

In addition to lagging behind private-sector employees in pay, Federal employee benefits in many instances are behind private-sector benefits, e.g. health benefits. Attention must be paid to the Federal employee benefit portion of the compensation package as well as to Federal pay.

PMA does not agree with the Commission that a substantial portion of the cost of improving Federal pay can be absorbed through existing personnel accounts. We do not believe it is practical to expect pay reform to be budget neutral.

Before leaving the discussion of pay, PMA would like to recommend, as it has before, that there be a "supervisory/managerial differential" paid to PMRS managers supervising more than one employee. Currently a GM-14 manager of a division can be receiving the same pay as a GS-14 professional with no supervisory responsibilities.

The Commission's Task Forces on Education and Training and the Task Force on Recruitment and Retention emphasized the inadequate attention paid to the development of management and executive leadership in the civil service. As a Commission task force report notes, with some notable exceptions, such as the IRS, agencies have all too often not taken the development of their own people seriously. Government agencies generally spend far too little on training of all kinds. The Commission's Task Force on Education and Training pointed out that Federal training amounts to 0.8 percent of the amount spent on Federal payroll, while Fortune 500 firms are estimated to spend 3.3 percent of payroll on training, and many progressive firms spend 5 to 10 percent of payroll on employee training and development. The Task Force on Education and Training suggested that a policy be adopted requiring regular training for all professional employees, with the Comptroller General's standard for government audit employees, of 80 hours of continuing professional education every 2 years, be extended to all civil service professionals. PMA agrees with this recommendation and especially recommends that managers be required to complete at least 80 hours of management/executive training every 2 years.

The Commission recommends that the number of senior executives currently eligible for annual bonuses be reduced by half to ensure that performance bonuses are used only as bonuses, not as hidden salary increases, and to concentrate scarce budget resources on the highest performers. The Commission's Task Force on Recruitment and Retention made a similar recommendation with respect to PMRS bonuses. PMA disagrees with these recommendations. We see no reason to impose a limit on the number of bonus recipients. We believe that decisions on the number of bonuses to be awarded are appropriately left with the agencies.

Bonuses are part of the performance appraisal system. That entire subject, for PMRS managers, is a serious problem, which I will not elaborate on at this time, when PMRS is not the subject of the hearing, beyond stating that PMRS, the performance appraisal system for Federal mid-level managers, involves a host of problems that need correcting and is responsible for much of the low morale suffered by Federal mid-level managers. We agree with the recommendation of the Commission's Task Force on Recruitment and Retention that the PMRS system needs to be improved.

We disagree with the Commission's recommendation to grant severance pay to presidential appointees at the end of their service. These appointees serve fewer than 2 years on average and they know their appointments are short-term when they accept them. The amount of money involved could be quite substantial.

We agree with the Commission's goal to recruit the best graduates for public service. The Commission's recommendations to establish a Presidential Public Service Scholarship Program for 1,000 college students each year, in return for a determined number of years of government service, is interesting. However, if the recipients of the scholarships do not remain in Federal service after completing their service requirements, we will not have accomplished the goal of the program, despite considerable expense. Recruiting the best graduates will not remain a problem, if civil service pay and "image" problems are corrected, the recruitment process is streamlined, and the employment experiences of recent graduates with the Federal Government are challenging and exciting.

PMA will be happy to work with you and your staff to implement the Commission's recommendations.

STATEMENT OF CHIEF JUDGE VICTOR W. PALMER, THE FEDERAL ADMINISTRATIVE LAW JUDGES CONFERENCE

Judge **Palmer**. I'm Victor Palmer. I'm an administrative law judge, and I am speaking today for administrative law judges, but I would suggest that any benefits that might come from what I say should also apply to that segment of the Administrative Judiciary, I would call it, who serve on boards of contract appeals.

Let me just explain who we are and where we are and why it is a confusing subject sometimes, and why we have a particular problem.

We are judges. We hear cases that are just as complex and as difficult as anything that is heard by the article three branch of government. However, we are part of the Executive Branch, and, as such, we find ourselves to be somewhat akin to neither fish nor fowl.

The article three branch, for example, now excludes magistrates and bankruptcy judges whose duties are similar to those of the administrative judiciary but whose pay is set in a linkage with that of United States District Court judges. That is becoming the practice in the article three branch.

We'd love to see something like that for ourselves, but that may be construed as being presumptuous. We do urge, however, that we should at least not be in the position where we are actually being paid less, in many instances, than members of the SES.

This has resulted in recruitment problems. We recruit basically lawyers who have had seven years or more experience—these are the requirements to become an administrative law judge—and, in addition to the problem of recruiting anybody at the Federal Government who is a lawyer with a lucrative practice, we also face the problem that when we try to encourage those lawyers who have joined the Federal Government and who have risen to the rank of deputy general counsel or assistant general counsel, that they are now being paid more and have a better pay package as part of the SES than we have as administrative law judges.

The reason for this is that when the SES was created a merit pay system was established under which bonuses are paid to employees, and that this would not be appropriate for judges who serve at agencies. Obviously, a judge who is going to decide a contract dispute involving how much an agency should be required to pay a contractor should not be paid a bonus by the agency—so, too, the judges who serve at the other agencies deciding very important rate making and other cases of concern to the agency, should not be recipients of bonuses.

So it is not appropriate for us to receive merit pay, and for that reason we were left out of the SES. However, as a result, not only do we not receive the bonuses, we also don't receive some of the other benefits—the cap that applies to the GS schedule—and most of us are in the supergrade—at a lower level than the one applicable to the SES. We are the last remnants of the supergrade, the GS–16's, 17's, and 18's. More than half of the people in that category now are the administrative judges. Our pay is still capped lower than that of SES, and we also don't have the ability to accrue leave and certain other employment benefits afforded the SES.

For that reason, when the 1989 Commission on Executive, Legislative, and Judicial Salaries reported on pay in general, at page 3 of their report it recommended that the maximum salary level for administrative law judges and judges who serve on boards of contract appeals be raised to that of members of the Senior Executive Service.

Further, on page 21, it stated that administrative judiciary personnel such as administrative law judges and board of contract appeal judges are particularly subjected to the compression in the general schedule. These positions lie primarily in supergrades of the general schedule and salary compression has made it difficult to recruit candidates for administrative judicial vacancies from among members of the Senior Executive Service.

The Volcker Commission has touched upon the problem, as well, and in its report, on pages 202 and 234, it recommends that whenever there is a study made of what to do about SES increases that the supergrade positions, particularly those—they mentioned administrative law and contract law judges—also be included.

I address this because we are seeing this problem of whether or not the pool of people that we will be able to attract and retain as administrative law judges is going to continue to be of the high quality it has been in the past.

Before I do what has been suggested and others may have done by talking too much about the limitations on government service, let me say that I think the people who are administrative law judges today or serve on the boards of contract appeals, are definitely among the brightest and the best of America's judges and America's lawyers, and we want to make sure that it stays that way.

Thank you, sir.

[The prepared statement follows:]

STATEMENT OF

CHIEF JUDGE VICTOR W. PALMER

FOR

THE FEDERAL ADMINISTRATIVE LAW JUDGES CONFERENCE

On behalf of the Federal Administrative Law Judges Conference, representing more than 400 Judges in 27 agencies, I am pleased to accept your kind invitation to inform the Committee of problems faced in recruitment of Administrative Law Judges.

The selection process for Administrative Law Judges is a unique rigorous, merit selection system administered by the Office of Personnel Management. To qualify for consideration, an applicant must have at least seven years of formal administrative law or trial experience as an attorney or judge culminating with experience at or just below that level of difficulty and responsibility of the position sought. If these minimum requirements are met, an assessment is made of the applicant's experience and accomplishments and a basic score is assigned. A written demonstration, in the form of a "test" opinion and a panel interview follow, in which the applicants are further rated and ranked. Finally, reference inquiries are sought from up to 25 persons who have sufficient knowledge of an applicant's ability, character and judicial temperament. Finally, a register of "eligibles" is prepared with successful candidates ranked by their examination results (plus veterans points, if any). An agency which requires Judges requests a certification of the top five names on the register from which it may make its selection.

Although it is true that the register now has sufficient candidates to fill all current and expected vacancies, that fact is misleading. Although there are a sufficient number of candidates on the register, those candidates on today's register are markedly different from those of five or ten years ago. Historically, the position of Administrative Law Judge was coveted by many senior government and private sector attorneys. Most of the candidates from the public sector were deputy or assistant general counsel of the various departments and agencies. Private sector applicants included law firm senior associates and partners and corporate attorneys.

The former applicants now are either in the Senior Executive Service with significantly greater benefits and opportunities for bonuses, or in private sector positions in which the salary disparity is so great as to preclude their interest in federal service. As a result, today's applicants are, for the most part, lower level government attorneys who were not selected for managerial or supervisory duties, or private practitioners whose success has not been sufficient to equal even the federal salary levels.

The example of the Federal Energy Regulatory Commission serves well to demonstrate all these points. That agency is responsible for some of the most complex and far-reaching cases to be tried by Administrative Law Judges. It has twenty judges (including the Chief Judge). Among them, three were graduated from Harvard Law School, three from Columbia Law School, and others from such Law Schools as Michigan, Chicago and George Washington. Most were "super-grade" assistant or deputy general counsels, some major legal office directors, one a corporate general counsel, and some judges in other agencies.

That agency has had two vacancies for more than a year and a third vacancy of several months. Because of the lack of applicants of sufficient qualifications on the register, those vacancies have gone unfilled. More serious, however, is the fact that approximately one-half of the remaining Federal Energy Regulatory Commission judges are eligible to retire. Should they do so, there will not be enough qualified judges to deal with the agency's caseload, with no relief in the form of new appointments likely.

This problem, which is not unique to the Federal Energy Regulatory Commission, will cause more and more severe problems as our experienced judges throughout government retire or seek other positions with greater remuneration. We note that Magistrates and Bankruptcy Judges are paid at the rate of ninety-two percent of the salary of Federal District Court Judges. Administrative Law Judges in many cases must deal with issues as complex or more complex as any handled by the other Federal Trial Judges.

We urge the Congress to act expeditiously to remedy this growing problem which has resulted in the unavailability of sufficiently qualified candidates for the critical positions of Administrative Law Judges.

Thank you for the opportunity to address the Committee.

Victor W. Palmer
Secretary

Mr. **McCloskey**. Thank you very much, Judge.

Basically you would endorse taking it to level four of the Senior Executive Service as far as administrative law judges? I'm just checking here with staff. That would put you in the area of $80,000 in the present economy.

Judge **Palmer**. Yes. We would do that. And also, frankly, we would think that the next step should also be—that would be an immediate one, but we think the next step would be to create some kind of a salary schedule for the Administrative Judiciary, if you will, that is the equivalent of the SES but without the bonuses and without the problems associated with merit pay.

Mr. **McCloskey**. As I understand it, immigration judges are administrative law judges.

Judge **Palmer**. They are members of the administrative judiciary who should also be considered.

Mr. **McCloskey**. I respect the idea that it can be as complex and as burdensome as any federal district or bankruptcy judge.

Judge **Palmer**. Certainly I think the magistrates and the bankruptcy judges and the administrative judiciary perform fairly similar functions.

The magistrates and the bankruptcy judges are now pegged at 92 percent of what a U.S. district court judge receives, and that pay is much higher than what the SES receives, for example. So, as I say, we are sort of being forgotten as a result of this odd place that we have in the judicial scheme of things.

Mr. **McCloskey**. I'm sure it is the case, but your field is also experiencing recruitment and retention problems? It is implicit in what you said, at any rate.

Judge **Palmer**. What we are trying to bring out, and it is not easy to state: there are lawyers out there seeking positions as administrative law judges. But what we are finding is that more and more of them are solo practitioners from areas where the pay is not as good as it might be. We're finding that—as an anecdotal way of doing this we just took a look at the Federal Energy Regulatory Commission, which has some 20 judges, and looked at what law schools many of those judges had attended. They included the more prestigious law schools in America. But today, we are seeing less and less resumes with those law schools listed by current applicants compared to years past.

Most of our judges are in their 50s now as shown by a recent OPM study. When they start leaving the bench, I'm fearful that the people who will replace them, unless something is done to improve the pay structure, will not be coming from the same kind of educational pool.

Mr. **McCloskey**. Thank you very much, Judge. I think you gave a very excellent, dynamic presentation.

There is a vote up on a Franking bill, of all things, and I also have a 1:30 meeting

I'd like to ask just two or three fairly quick questions for the record.

I have a general question for anyone that wants to have a try at it on locality pay. Obviously one of the problems that could come up is, in effect, people on the borders immediately on both sides of the borders—I could imagine, for example, Evansville, Indiana, and

Henderson, Kentucky, in the same metropolitan area perhaps theoretically having different federal pay schedules. Do you think it is possible to do that equitably? Should there be staggered differentials between different regions depending on how far out you are—I don't know if I am making any sense—fading into one region or another, like Indianapolis and Chicago, and have two or three different pay areas where the pay between any two localities immediately bordering each other isn't too abrupt?

Does anyone—I know we can have hearings on this, and some groups have not taken a position on it, some oppose it, some are for it. But can this be worked out so it doesn't create more nightmares than we have in inequities now?

Mr. MOYER. There are certainly going to be a host of administrative problems arising in the implementation of this kind of approach. The impact of urbanization is going to be greater in applying a locality market approach toward the general schedule than exists under the federal wage system, because that has tended to apply more to non-urban areas of the country.

I think the cost of living in urban areas tends to remain generally the same, whether you are in the suburbs or in the inner city. But there have always been problems with the federal wage system as to where the boundary is drawn.

Certainly there are folks north of here in Howard County who believe that they should be compared more so with the Washington area than they are with the Baltimore area in terms of their private sector comparison.

Mr. MCCLOSKEY. Obviously there is going to be a lot of very difficult variables to deal with on the implementation of any system like that.

Does anyone else want to comment very briefly?

[No response.]

Mr. MCCLOSKEY. Ms. Bonosaro, you mentioned 40 hours of approved training being recommended yearly for retention in the SES. Could you comment precisely on what that training would involve?

Ms. BONOSARO. I think that would largely be up to the executives, themselves. They are required—I suspect this is observed more in the breach than not—to prepare individual development plans each year, and they can identify areas where they either want to brush up skills, or keep abreast of new developments. Our concern is—and it was borne out by GAO's study recently of executive training—that so few of them go anywhere because they cannot get out of their offices.

We think for the health of the executive corps, they've got to be sprung loose. We know certainly the SES sabbatical program was an empty promise that didn't come to pass. We feel as a minimum this could be a matter of attending conferences or seminars in their specialties.

Mr. MCCLOSKEY. One thing I have noticed in some areas of the federal service is that basic interpersonal and management communications are very deficient in many agencies and something that has to constantly be worked on—just how to get along with people and how to generate group leadership.

Ms. **Bonosaro**. Absolutely. And that is another dimension, too, which we, like FMA, operate some professional development programs at our national conference each year. Just the interplay of executives from across the full spectrum of federal agencies often causes them to discover experiments that are being tried in one agency that another agency was not aware of. There is a great deal to be gained from getting these people out of their offices and having some communication with executives from other agencies, as well

Mr. **McCloskey**. And, Ms. Benson—and I must thank all of you and go off to vote and to another meeting—you are moderately positive, I guess, to put it in context, as to the Volcker Commission recommendation for national civil service scholarships, but expressed skepticism about permanent retention. If someone goes to the military academy, as I understand it, they generally commit five years of service upon graduation from the academy. We don't require lifetime commitments or indefinite involuntary servitude——[Laughter.]

Mr. **McCloskey**. As economical as that would be. Did you have a specific suggestion on this? Has there been much discussion in your group?

Ms. **Benson**. Well, the Commission's recommendation did require so many years of service. I don't know that they were specified.

Mr. **McCloskey**. Right.

Ms. **Benson**. All we're saying is that if we had such a program we'd want it looked at to see if these people stay beyond their service requirement. Most of the people——

Mr. **McCloskey**. That would be the goal, I would hope.

Ms. **Benson**. Right. And if they don't, then you might want to reconsider. Most of those that go to the Naval Academy only have so many years requirement, but most of them stay. They make it a career. If it is found that the scholarship program recipients are not making it a career, we might want to look at it. It is a rather expensive program.

And also the problems in recruiting people for civil service are not the same as recruiting people for military careers.

Mr. **McCloskey**. I thank you very much. All the presentations were excellent. I know Mr. Ford thanks you. He is working so hard at this it is unbelievable.

This hearing is adjourned.

[Whereupon, at 1:42 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

WEDNESDAY, MAY 3, 1989

U.S. House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room 311, Cannon House Office Building, Hon. William D. Ford (chairman of the committee) presiding.

Mr. Ford. The committee will come to order. Today, we have the fourth of a series of hearings on the Report of the National Commission on Public Service. The Commission has outlined some 15 recommendations to improve the quality of the public service and the quality of public servants in all three branches of the Federal Government serving the American people.

Today, it is with great pleasure and the highest regard that I welcome our sole witness today, the Honorable William H. Rehnquist, Chief Justice of the United States Supreme Court.

The committee greatly appreciates your honoring our request to appear and share your views on the critical issues before us, Mr. Chief Justice. We fully understand the magnitude of what in our history, is this unique, appearance. The very fact that you have responded to our request, to have you appear and publicly state your concerns indicates—and I hope will indicate to a lot of Americans—the gravity of the issues that will be before us as we go through these hearings.

This occasion is a particular honor for me as Chairman, because I began my career in public service as a high-ranking Justice of the Peace in Taylor Township, Michigan. As a matter of fact, I feel about as nervous with you here, Mr. Chief Justice, as the first time I put somebody in jail. That is not our purpose here today.

After some time as Judge Advocate during the Korean War I had the honor of being admitted to practice before your Court, before the Honorable Earl Warren, then Chief Justice, and I have considered that to be one of the great honors of my life ever since.

I was admitted to the Court in 1956 and it has been my privilege to move the admission of other people in the ensuing years and I never approach that building, the Supreme Court—I walk past it every day coming to work—without, as a lawyer, having a great reverence for the importance of that institution to our country.

The history-making fact that you appear here today, breaking with long-held traditions, says much for the crisis which the Federal Government faces in all of its branches in their ability to recruit and to retain the best and the brightest in service to our country.

The glory days of government service are gone. They have been replaced, I am sorry to say, by the sorry days. We now have Civil Servants under siege, executive agencies without the people and pay to complete their missions and a Federal bench coming in second place in the competition for legal talent.

To date we have heard from Chairman Paul Volcker and Commission members on the scope of their findings. We have heard from NASA and the National Institutes of Health on their difficulties in attracting the scientists and engineers who we count on to keep us ahead in the space race. At the National Institutes of Health they cannot get the people they need who will some day save lives. This malaise filters down to all levels of government.

We need customs officers to help stop the flow of drugs. We need food and health inspectors to guarantee the public safety. We need economists and business people to protect our consumers against antitrust violations or to assure stockholders that their small investments on Wall Street will have the same protection as do those of huge, multinational firms.

This nation can ill afford a Federal work force judged as merely adequate. To meet the challenges of today we can ill afford merely adequate research scientists to work on cures for cancers and AIDS. We can ill afford merely adequate air traffic controllers who ensure safe air travel. We can ill afford merely adequate bank examiners to prevent the savings and loan mess from recurring, and finally we can ill afford a mediocre Federal bench to mete out equal justice under law.

Mr. Chief Justice, the Committee and this Chairman welcome your testimony. We pledge to work with you in rebuilding the pride and professionalism of public service and to make it possible for highly dedicated people to remain on the bench and provide for their families in an adequate fashion.

Now, I would yield to the ranking minority member, Mr. Gilman, if he would like to make an opening statement.

Mr. Gilman. Thank you, Mr. Chairman. I will be brief. I certainly want to join you in extending our Committee's deep gratitude to the Chief Justice, for taking the time to appear today before our Committee. It is certainly a distinct honor to have Mr. Chief Justice Rehnquist with us this morning to discuss the status of judicial salaries and its effect upon the entire Federal judiciary and I commend our Chairman for arranging this historic session.

As the Chief Justice is aware, our Committee has been conducting a series of long-overdue hearings on rebuilding the public service by exploring the findings and the recommendations of the Volcker Commission's Report on Public Service and I know that the comments of the Chief Justice are going to assist us immeasurably in addressing the issue of judicial salary reform as it relates to assuring that our Federal judiciary can attract and retain the quality judges that it certainly deserves and needs.

We look forward to hearing from the Chief Justice on these issues and once again we welcome you, Mr. Chief Justice.

Mr. Ford. Mr. Clay?

Mr. Clay. No opening statement, Mr. Chairman.

Mr. **Ford**. Mr. Horton?

Mr. **Horton**. Mr. Chairman, I join you in welcoming Chief Justice William Rehnquist, here today to testify. The witness' perspective on the views of the Judicial Conference, on the issue of pay for Federal judges, will be helpful to the committee as we continue to study methods to improve the quality and attractiveness of public service.

It is of great importance to our entire Nation that the Federal Government be served by career servants of the highest caliber. I am highly complementary of the current Federal workforce. They have been doing an outstanding job despite numerous contraints on pay and benefits. However, I am increasingly concerned about reports of the erosion of the quality of the Federal workforce. I believe that we in the Congress must work together to retain our talented civil servants.

This committee has done outstanding work on behalf of Federal employees. We have enacted legislation to prevent reprisals against Federal employees who blow the whistle on waste, fraud, and abuse in the Federal Government. The Act, the Whistleblower Protection Act of 1989, was the culmination of over 5 years of extensive negotiations and represents a strong victory for Federal employees. Last week the House overwhelmingly adopted our bill to allow Federal employees the opportunity to exercise their constitutional right of full political participation. I am optimistic that the Senate will act expeditiously on the Hatch Act Reform Bill, H.R. 20.

Mr. Chairman, I am willing to work with you and other committee members to analyze and hopefully take action on some recommendations of the Volcker Commission. I look forward to hearing from today's scheduled witness.

Mr. **Ford**. Ms. Schroeder?

Ms. **Schroeder**. No statement.

Mr. **Ford**. Mrs. Morella?

Mrs. **Morella**. I also want to thank you, Mr. Chairman, for arranging this meeting and to thank you, Mr. Chief Justice, for appearing before us in our discussion and analysis of the Volcker Commission report. I may ask permission to have an opening statement included in the record, but I want to say, let us look at the facts.

Salaries of United States Judges have declined in real terms by 30 percent since 1969. Without legislation, salaries of Federal judges can only rise when Congress increases its own salary level. The only way to eliminate this would be to pass legislation.

The case load of the Supreme Court is at an unprecedented high today; and finally, as ironic as it may sound, the fact is Federal judges are among the lowest paid attorneys, given age and experience, in America's legal profession today.

The issue of raising judicial salaries is one of fairness. Our court system is no longer in a position of being able to attract those who seek greater financial reward in private practice. While Federal salaries would never equal those in the private sector, it seems really appalling that one of our most highly respected offices, that of the Federal judiciary, has been subject to this quiet crisis.

I look forward to hearing the Chief Justice comment on this and enlist the support of this committee and the support of Congress to correct the situation.

Thank you, Mr. Chairman.

Mr. **FORD**. Mr. Ackerman?

Mr. **ACKERMAN**. I will concur in the unanimous decision.

Mr. **FORD**. Mr. McCloskey?

Mr. **MCCLOSKEY**. No statement, Mr. Chairman.

Mr. **FORD**. Mr. Dymally?

Mr. **DYMALLY**. No statement.

Mr. **FORD**. Mr. Sawyer?

Mr. **SAWYER**. No opening statement.

Mr. **FORD**. Mr. Kanjorski?

Mr. **KANJORSKI**. No opening statement.

Mr. **FORD**. Mr. Udall is not here. Mr. de Lugo?

Mr. **DE LUGO**. Good morning. I want to thank the chairman of the full committee, Mr. Ford, for holding the series of hearings on the recommendations in the report entitled, "Leadership for America: Rebuilding the Public Service," by the National Commission on the Public Service.

Mr. Chairman, we are very fortunate to have with us today the Chief Justice of the Supreme Court, the Honorable William H. Rehnquist.

Throughout these hearings, the recurrent theme has been the need to create an environment within the Federal civil service that would entice the best and the brightest men and women into Government service.

The judicial branch of Government has long been the protector of our liberty and equality. At this very moment, judges at every level of our Federal judiciary are contemplating leaving the Federal civil service for more lucrative practices in the private sector.

"Equal Justice Under Law". Those words can be found above the doors of the Supreme Court. It would be a travesty of justice to force judges to leave the bench simply because of fiscal concerns. It is important that we improve the overall environment within the judicial branch to ensure that we are able to retain our best judges.

Again, Mr. Chairman, I want to thank Chief Justice Rehnquist for coming today, and I want to thank you for your leadership during the course of these hearings on rebuilding the public service.

Thank you, Mr. Chairman.

Mr. **FORD**. Without objection, the prepared testimony of the Chief Justice will be placed in the record. You may proceed, Mr. Chief Justice, to add to it, supplement it, summarize it or otherwise amplify this record in any way that seems most appropriate to you.

[The prepared statement and a draft bill follow. The document entitled "Simple Fairness: The Case for Equitable Compensation of the Nation's Federal Judges," appears at the end of the hearing. See p. 657.]

PREPARED STATEMENT OF HON. WILLIAM H. REHNQUIST

Mr. Chairman and Members of the Committee, I appreciate the opportunity to appear today and offer my views on a matter of great national importance: that is, the pressing need for salary reform in the federal judiciary.

I believe that the inadequacy of current judicial salaries is the single greatest problem facing the Judicial Branch today. In my view, the failure adequately to address this problem poses the most serious threat to the future of the judiciary, and its continued operations, that I have observed in my seventeen years of judicial service. These hearings, and the attention accorded to this issue by your Committee, give me reason to hope that this problem may be at least alleviated, if not completely solved in the near future.

I appear before you as presiding officer of the Judicial Conference of the United States, the governing body of the nation's federal judges. I assure you that the urgency with which I view this matter is shared by every member of the Judicial Conference. My views also reflect the concerns, expressed with increasing frequency and conviction, of the men and women serving in every circuit and district court across the land. We believe that something must be done to address this nagging problem of inadequate judicial pay, not only for the present, but for the long term as well.

On behalf of the Judicial Conference and the nation's federal judges, I urge this Committee to take appropriate action now. Specifically, I urge this Committee to support and the Congress to enact legislation that will immediately increase the pay of federal judges and provide a regular mechanism to evaluate and adjust their salaries in the future. At its last semiannual meeting, in March, the Judicial Conference considered what course of action to recommend. The Conference unanimously adopted a resolution calling for an immediate 30 percent increase in judicial salaries, coupled with provisions assuring that judicial officers receive regular periodic cost-of-living adjustments (COLAs) similar to those received by almost all other governmental personnel. We believe these steps would go a long way toward solving the current pay crisis and would provide a sorely-needed replacement for the currently unworkable, and unduly controversial quadrennial pay adjustment mechanism.

The Judicial Conference did not come lightly to this recommendation, nor did we ignore the recent unhappy history of salary increase proposals. We recognize that there was widespread public opposition to President Reagan's recommendations for an across-the-board raise for senior federal officials in the range of 50 percent. We believe, however, that a smaller increase of 30 percent for federal judges is both publicly acceptable and fully justified. We further recognize that there were institutional objections to the 50 percent pay increase proposal, which would have resulted in Congress' increasing its own pay by that substantial amount. Certainly the arguments favoring salary increases for members of Congress and high-ranking Executive Branch officials can be persuasively made. The Judicial Conference continues to support an increase in pay for senior officials in all three branches of government. Nevertheless, we defer to the Congress' determination of how best to provide fair salary adjustments for Executive and Legislative Branch officials, while asking the Committee for priority consideration of our urgent recommendations on behalf of the federal judiciary.

I have furnished copies of the Judicial Conference's recommended legislation to the honorable members of this Committee as an attachment to my testimony today. I would like briefly to review its two key provisions.

The first objective of the legislation is to accomplish an immediate, substantial salary increase for federal judges. We propose to increase judicial salaries by thirty percent of their current level. This is not, in my view, fairly termed a pay "raise" (although such a raise would certainly not be unwarranted considering the unprecedented level of filings and caseloads in the federal courts.) This is instead a partial recapture of the tremendous decline in purchasing power that has affected judicial salaries over the last 20 years. In order to restore judicial salaries to the level of purchasing power they enjoyed in 1969, somewhat larger increases would have to be proposed. Recognizing the political difficulty of restoring such large effective losses in a single year, the Judicial Conference has recommended a smaller but still substantial adjustment.

Our proposal for a thirty percent salary increase does not alter the provisions of Title 28, United States Code, that define salary rates for judicial officers and provide for adjustment of the rates in accordance with the Federal Salary Act of 1967, as amended. As a consequence, unless Congress elects to reformulate the existing Federal Salary Act procedures, judicial salaries will continue to be reviewed every four years by quadrennial salary commissions established thereunder.

The 30 percent salary adjustment proposed in Section 2(a) of our recommended legislation would apply to Supreme Court Justices and federal judges appointed under Article III of the Constitution. As a result of this proposal, the current salary of Associate Justices of the Supreme Court would rise from $110,000 to $143,000; the salary of circuit judges would rise from $95,000 to $123,500, and the salary of district judges would rise from $89,500 to $116,350. The proposed adjustment would also have the effect of increasing salaries for United States Claims Court judges, United States bankruptcy judges, and full-time United States magistrates, all of whose salaries are linked by statute to the salary of a United States district judge. The revised salary levels for these other judicial officers are set forth in the section-by-section analysis attached to the proposed legislation.

The second key feature of the Judicial Conference's recommended legislation is the proposed adoption of a routine cost-of-living adjustment mechanism. We firmly believe that federal judges should receive the same sorts of periodic cost-of-living increases granted by statute to most other government employees, including government retirees. Moreover, we believe that providing for regular cost-of-living adjustments to judicial salaries could well obviate the need for the sort of sizable "catch-up" increases proposed by past quadrennial salary commissions, which have proved unacceptably controversial. Had federal judicial salaries been adjusted over the last twenty years to match the rate of increase in other government pay, they would be in the same range as the current proposal seeks to accomplish in one major adjustment. Protecting judicial salaries from the steady erosion of inflation is both a fair and practical alternative.

At present federal judges may receive periodic salary adjustments equivalent to those afforded to General Schedule (GS) federal employees only if Congress acts affirmatively to allow them. Congress' historical reluctance to increase its own pay levels has often meant that cost-of-living increases for other senior government officials have also been denied. Even when annual increases have been authorized, they generally have been inadequate to maintain the real value of judicial salaries. This is because the cost-of-living increases allowed to GS employees generally have been below the actual level of inflation measured by Consumer Price Index data.

The current system of protecting judicial salaries from the effects of inflation is fine in principle but severely flawed in practice. We recommend that this system be replaced with one that ties federal judicial cost-of-living increases to those received by civil service retirees and that allows the increases to take effect automatically, once their size is determined, without the need for a separate enactment. Once judicial salaries are increased sufficiently to compensate for the past years of effective decline, periodic cost-of-living adjustments equivalent to those afforded to civil service annuitants should keep judicial salaries current and maintain judges's purchasing power.

Before closing, I want to touch on what I believe to be the compelling arguments behind our recommendation. These arguments have not lost their force by virtue of being oft-repeated and easily understood. Stated simply, judicial salaries, which are constitutionally protected against diminution in amount, have over time been allowed to decline in real value to the point that federal judges are now among the lowest paid of all attorneys of similar age and experience in the legal profession.

I have attached to my testimony a copy of *Simple Fairness: The Case for Equitable Compensation of the Nation's Federal Judges*, which was prepared last year by the Judicial Conference Committee on the Judicial Branch for submission to the 1988 Commission on Executive, Legislative, and Judicial Salaries. This submission details the inadequacy of federal judicial salaries from several perspectives. The submission demonstrates the extent of inflation erosion that has diminished the purchasing power of judicial salaries to little more than two-thirds of their 1969 level. This is shown to contrast sharply with the experience of most other federal and private workers, whose salaries have much more closely matched the pace of inflation. The submission further recites the evidence of generous compensation levels in other sectors of the legal profession: private law firms, corporate practice, academia, and the judiciary in other common law countries. These compensation levels, too, have surged well ahead of the federal judiciary.

Having lived the last two decades in Washington, D.C., I am well aware of the traditional Washington response to statements like mine: everyone wants to see evidence of the cataclysmic disaster that surely must be in the making. I will concede that the problem facing the federal courts does not have the graphic impact of an Alaskan oil spill or the high visibility of potentially poisoned fruit at the corner grocery store. For just this reason, this issue has aptly been termed a "quite crisis." To say, however, that the inadequacy of judicial pay has effects that are gradual and insidious rather than sudden and explosive does not detract from the seriousness of the judiciary's problem. Declining real salaries have contributed to an increased rate of departure from the federal bench. They have hampered efforts to recruit highly qualified people for appointment to the bench, particularly people who are not independently wealthy and who have children still to educate. And they have worsened the morale of federal judges who see their law clerks graduate to substantially higher salaries after only a few years in private practice. These are serious problems that will only grow in magnitude in the absence of remedial action by a concerned Congress.

Those dedicated members of Congress and the Judiciary who have previously contended with this issue no doubt feel a sense of frustration at its annual recurrence. Our situation is reminiscent of the legendary punishment visited on Sisyphus, the figure in Greek mythology whose fate it was to roll a stone to the top of a hill, but who never could accomplish his task. Each time Sisyphus almost reached the summit, the stone would slip his grasp and roll to the bottom again, whereupon he would wearily retrieve it and start over. Federal pay for senior officials has followed this same unfortunate pattern: as soon as salaries are increased to compensate for past inflation losses, they begin another gradual decline in value, and the struggle to adjust them is repeated again and again.

We ask the Congress to break this pattern by granting federal judges an immediate salary increase followed by an automatic salary adjustment mechanism that will ensure that real salaries are never allowed to fall so low again.

I would be happy to answer any questions you may have on this issue.

A BILL

To restore lost compensation and establish the procedure for adjusting future compensation of justices and judges of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PREAMBLE.

The Congress hereby finds and declares-

1. The salaries of judges of the United States have fallen substantially in real income terms during the last 20 years, declining in purchasing power by more than 30 percent since 1969.

2. Periodic pay adjustment legislation, although raising salaries in absolute amounts, has proved inadequate, in an age of unparalleled economic growth and inflation, to maintain a rational relationship between private sector compensation and federal salaries for officials of all three branches.

3. The Constitution of the United States provides that judges of courts established under Article III shall hold their offices "during good behavior" - for life.

4. The failure to provide immediate relief by enacting substantially improved judicial salary rates will imperil the ability of the courts of the United States to function as an effective, independent judiciary by-

(a) deterring sitting judges from continuing in office, an ominous trend that has already been manifested by the unprecedented number of judicial resignations since 1970; and

(b) impeding well-qualified candidates from aspiring to federal judicial office and accepting nomination by the President thereto.

This will dilute the quality of the judiciary and frustrate the congressional purpose to broaden the base of the judiciary, as expressed in the last two acts creating new federal judgeships, both of which require that the President, in selecting individuals for nomination to judicial office, shall "give due consideration to qualified individuals without regard to race, color, sex, religion, or national origin."

5. The foregoing conditions mandate legislative action that will begin to restore real income lost over the past two decades and ensure that future erosion does not occur.

SECTION 2. RESTORATION AND ADJUSTMENT OF COMPENSATION.

The justices and judges of the United States referred to in paragraph (a) below shall receive a compensation that consists of the salary of the respective judicial offices provided by title 28, United States Code, adjusted as provided in paragraphs (a) and (b) of this section.

(a) Notwithstanding sections 5, 44(d), 135, and 252 of title 28, United States Code, the annual salary rates of the Chief Justice of the United States, Associate Justices of the Supreme Court of the United States, United States Circuit Judges, United States District Judges, and Judges of the United States Court of International Trade, are hereby increased in the amount of 30 percent of their respective existing rates, effective March 1, 1989.

(b) Section 461 of title 28, United States Code, is amended by striking paragraph (a) and inserting in lieu thereof the following:

> "(a) Effective on the same date that civil service retirement annuities payable under chapter 83 of title 5 are increased as provided by section 8340 of that title, each salary rate which is subject to adjustment under this section shall be adjusted by the same percentage amount as the annuity adjustment under section 8340 of title 5, rounded to the nearest multiple of $100 (or, if midway between multiples of $100, to the next higher multiple of $100).".

(c) Section 140 of Public Law No. 97-92, 95 Stat. 1200, is hereby repealed.

SECTION 3. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as necessary to carry out the purposes of this Act.

STATEMENT OF HON. WILLIAM H. REHNQUIST, THE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT

Chief Justice Rehnquist. Thank you very much, Mr. Chairman and members of the Committee. I very much appreciate the invitation to appear before the Committee today and explain the views of the Judicial Conference of the United States, which are also my own views, on the issue of pay for Federal judges.

As you commented, Mr. Chairman, and you too, Mr. Gilman, my appearance before you today apparently sets a precedent in that no sitting Chief Justice in recent history has testified before a congressional Committee.

Thinking of my feelings as I finished testifying before the Senate Judiciary Committee three years ago on the occasion of my nomination to be Chief Justice, I must say I would not have expected to be the Chief Justice who broke that precedent, and I am happy that the circumstances today are less confrontational than they were at that time.

I wish to emphasize today, in every way that I possibly can, the critical need for a significant upward adjustment of judicial salaries. Without that sort of an upward adjustment we are going to begin to see more resignations from the bench, more damage to the morale of those judges who remain, more difficulty in recruiting new judges.

Although my testimony before you today is limited to my observations about the Judicial Branch, I realize that we are not the only branch of government facing inadequate pay because of failure to keep up with inflation, and, Mr. Chairman, your recital of the people who have testified here before you in your Committee hearings makes it obvious that the problem exists throughout the Federal Government.

We think we understand the plight of the Legislative and Executive Branches, and within the bounds of propriety we have been and will continue to be supportive of pay increases for all three branches of government.

At its semiannual meeting last March, the Judicial Conference of the United States adopted a resolution calling for a 30 percent pay increase and the introduction of a mechanism which would assure that Federal judges are protected against future inflation by some form of annual cost of living adjustment.

The reason for the 30 percent present increase is to recapture purchasing power lost from judges' salaries over the past 20 years, due to inflation. The reason for the cost of living adjustment provision is to make sure that future inflation is countered with annual adjustments and not with a necessarily large catch-up type increase covering many years for which there was no adjustment.

Mr. Chairman, I know that this Committee is thoroughly familiar with the issue. You may have already heard far more about it than you really want to and so I will not undertake in my oral statement to recite the percentage decreases in earning power, comparisons to other salaries, the potential for resignations and the like.

A thorough analysis of all these issues is contained in the statement presented to the House Judiciary Committee last week by

Judge Coffin, in the Judicial Conference paper, "Simple Fairness," which I have incorporated with my formal statement, and in my formal statement to this Committee, and I appreciate the Committee making those a matter of its record.

Let me close by reiterating my deeply held feeling that a fair and reasonable salary structure for Federal judges is absolutely essential if we are to attract and retain the high quality men and women who have given the Federal judiciary its present enviable reputation.

I think I know how widespread the feeling is among many people that there should be no significant pay increase for Federal employees at this time, but in the case of judges, who are the Federal employees I know most about, it is a prerequisite that they have gone to law school, taken three years after a bachelor's degree and spent that time getting professional training. They must have been admitted to the bar, practiced law long enough to warrant consideration for nomination to the office of Federal judge.

Lawyers and private firms in most good-sized cities who meet these qualifications earn a good deal more than Federal judges presently do. There may be a feeling abroad that lawyers make too much money, but so long as judges are recruited from lawyers, that fact has to be taken into consideration in deciding how much judges should be paid.

I know that this Committee is going to be faced with some difficult decisions as it goes about its assigned and important task in this area. I can assure you that the Judicial Conference of the United States looks hopefully to you for a solution to the problem of judicial pay and, along with all other Americans, for a responsible solution to the pay problems in the Executive and Legislative Branches as well.

That concludes my remarks, Mr. Chairman. I will be happy to try to answer any questions on this subject that the Committee may have.

Mr. FORD. Thank you, Mr. Chief Justice. Without objection, I would like to mention for our official record the document entitled, "Simple Fairness: The Case for Equitable Compensation of the Nation's Federal Judges," The document, passed by the Committee on the Judicial Branch of the Judicial Conference of the United States, was referred to by the Chief Justice in his testimony.

Mr. Chief Justice, the Judicial Conference recommends adjusting pay of Federal judges at the same time and in the same percentage as Civil Service retirement annuities are adjusted. There have been occasions in the past when Civil Service retirement COLAs have been reduced or eliminated, notwithstanding increases in the Consumer Price Index.

Should judicial pay adjustments be strictly tied to the COLA received by Civil Service retirees, or should such pay adjustments be tied to the increase in the CPI, regardless of what action is taken by the Congress with respect to the retirement COLA?

Chief Justice Rehnquist: I do not think the Judicial Conference, Mr. Chairman, really gave a great deal of attention to precisely what index the proposed COLA should be tied. It may well be that your suggestion that it be tied to the Consumer Price Index, which is kind of an automatic thing, rather than to COLAs which are given by Congress to Civil Service retirees, would fill the bill even better.

I think the Judicial Conference's idea was that part of the public unacceptability of the proposed 50 percent raise, which was defeated earlier this year, was the fact that it represented so much catching-up that it just was too much. The idea of some sort of cost of living adjustment that would prevent that sort of thing from having to take place in the future was what the Judicial Conference had in mind.

The precise index, or scale to which it was tied, was of less concern than the idea itself.

Mr. FORD. Thank you. Now, earlier this year when all of the hullabaloo was going on, some critics of the Quadrennial Commission's pay recommendations—that went to the President and then came to us endorsed by both the outgoing and incoming President—questioned the need for a substantial increase in judicial salaries by pointing out—and this is the case they made—that departures from the Federal judiciary have averaged less than 1 percent a year over the past 15 years and that no President has had difficulty in finding suitable candidates for the Federal bench.

Those are the critics' words, not mine. How would you respond to that criticism?

Chief Justice Rehnquist: Let me make two or three points in response to it, if I might, Mr. Chairman.

In the first place, although it is quite true that the resignations from the Federal bench have never amounted to 1 percent per year, they are increasing quite dramatically from virtually none to perhaps six, seven a year on the average, now. Resignations are increasing sharply, although they still do not amount to a major percentage or even a large minor percentage of the judges.

But when you stop to think of the incentives that a Federal judge has after he or she takes the bench, you can see why there are so few resignations in spite of the fact that there's a strong feeling among virtually all judges that the pay is inadequate.

Federal judges get a generous pension at the time of their retirement, but in order to get any pension benefit from being a Federal judge you must stay until you are 65. If you go on the bench at 45 and leave at 60, you take with you absolutely nothing in the way of a pension.

So the longer a judge has been on the bench, the more the incentives are to remain in spite of dissatisfaction with current salary, because if you are 60 years old and you have served for 12 years, in five more years you are going to be entitled to retire at full salary. If you leave now, you get absolutely nothing, which I think is quite unlike the situation with most other Federal retirees.

I also think that when you look at some of the things that have happened in some of the districts you see that the problem is accentuating in large cities—for instance, take the Northern District of Illinois, which is basically Chicago.

Now in the Northern District of Illinois in the past two or three years, there has been—Judge Susan Getzendanner, who is regarded as an outstanding District Judge, resigned after a few years on the bench and went with a private law firm at a much larger sum of money. Two judges, active and in good health when they became 65 resigned and they have gone into private practice. Now, they might well have taken senior status at that time, and then they would have been available to do judge's work. So the Northern District of Illinois, which has 20 active judges, has lost three judges over the past few years.

So far as the recruitment problem is concerned I am not intimately—or in fact involved with that in any way. The Attorney General's staff from the Justice Department would probably be much more able to answer that question than I would.

Let me pass along to you, though, one bit of anecdotal evidence and that is the only kind of evidence I have on this score. I was talking to a judge not long ago. The judge sits in a district which is in a large city but also includes a lot of smaller cities in the part of the state that that is in.

He said that of the last few appointments to the court—the District Court—over a period of years none has come from the private bar of the major city. They were all promoted state court judges or practitioners from smaller cities and, obviously, state court judges and practitioners from smaller cities are very desirable judicial candidates. They should be considered; they should be appointed.

But one of the great things about the Federal bench that really I think has made it a very fine part of our government is the fact that it has always drawn from all parts of the profession. It has drawn from U.S. attorneys, state judges, lawyers in small towns, lawyers in large cities. I would hate to see the lawyers in good-sized cities simply ruled out as possible candidates for Federal judgeships, and I fear that is what is beginning to happen.

Mr. FORD. Thank you very much.

I might observe that your predecessor, Mr. Chief Justice Burger, after you replaced him, did appear before this committee, and he also submitted written testimony during previous pay hearings.

In his appearance before the committee he offered a personal observation which was in no way critical of the quality of the people being appointed to the bench of course. His personal observation was that having checked, he found that rarely today were people accepting an appointment to the federal bench who had reached full partner status in any law firm of any size. The indication was that there is a kind of limitation coming into play here, where the dramatic difference between somebody with partnership status in a successful law firm and the level of compensation and the limitations on outside compensation of a federal judge were such that they were forced to say, "no thank you," because the sacrifice to their families and the future of their children's education would be too much.

Have you any similar kind of a reaction?

Chief Justice Rehnquist: My observations are of the same sort of anecdotal types that my predecessor had. But I would like to say in response to your comment, Mr. Chairman, that there are always going to be a large number of partners in big-city law firms who simply are not interested in becoming federal judges because they do not want to make the financial sacrifice.

And the sort of pay raise that the Judicial Conference is proposing would not change that at all. I mean, if you are interested in making money and you are now making $250,000 or $350,000 a year, the fact that a District judge's salary has gone up from $89,500 to $112,000 or $116,000 is not going to influence you in the least.

And I do not have to tell the members of this committee that no one goes into public service to make money. And certainly the sort of thing we are proposing, and the sort of matters your committee has been proposing, would not change that at all. It is just a question of whether you can make a decent living in public service.

Mr. FORD. Thank you.

Mr. Gilman?

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. Chief Justice, would you recommend the elimination of the quadrennial pay adjustment mechanism as it presently affects the judicial branch?

Chief Justice Rehnquist: I have not really thought that proposition through, Mr. Gilman.

If Congress were to provide for annual or periodic, regular cost-of-living increases for the judges, certainly one of the functions of the Quadrennial Salary Commission would be eliminated.

But I have a feeling it was also supposed to serve another purpose, and that is to take a look at the structure of various occupations in our society and see what changes had taken place, not just by reason of inflation, but by reason of other sorts of changes, and see if government salaries needed to be adjusted along those lines.

And it seems to me, if I am right in that, the Quadrennial Salary Commission would still serve an important function, even though cost-of-living adjustments took care of inflation.

Mr. GILMAN. Mr. Chief Justice, in your prepared text you state that the Judicial salaries have been constitutionally protected against diminution in an amount, but over the time, have been allowed to decline in real value. In your opinion, is that diminution in real value, could that be considered a diminution in amount that was set forth in the constitutional protection?

Chief Justice REHNQUIST. Mr. Gilman, I hope you will let me beg off that question. It is a question that conceivably might come before the Court at some time. I really have not thought it through at all, and I would not want to express even a casual opinion about it without having the benefit of seeing arguments on both sides, going about it the way a judge usually goes about deciding a question of that sort.

Mr. GILMAN. I do not recall whether there is such a protection for Congress, but I think that maybe we ought to give some thought to that in the future.

Mr. FORD. I think the purpose of the constitutional provision is to protect them from us so that we would not, in anger, when there was a decision that we do not like, take it out on them. I think that was a wise provision, because there have been periods in my 25 years when there have been salivating members who wanted to get at that Court.

But I would ask the members not to ask the Chief Justice for interpretations of constitutional matters, because there is no safe way to assume that any constitutional question posed to him is not going to come before the Court at some time. We do not want to prejudice anybody, no matter which side they happen to be on, or place the Court, through the Chief Justice, in an embarrassing position.

Mr. **Gilman**. Thank you, Mr. Chairman.

I might submit that maybe we should explore how the Congress can protect itself from itself.

Mr. Chief Justice, to paraphrase Ralph Nader's argument against judicial, legislative and executive branch salary increases, and the chairman may have touched upon this a bit, but I would like you to explore it a little further.

He talked about financially competitive federal salaries only reinforcing the historical pattern of recruiting candidates for top-level government positions from the corporate and monied classes, something that you are saying is not happening today. He argues that current salaries are fully adequate, if not excessive, and efforts to recruit high-level officials should be broadened to include public interest lawyers and other social activists in order to make government more representative.

I would appreciate your comments with regard to Mr. Nader's statement.

Chief Justice **Rehnquist**. Well, certainly, I think the appointing authority, who, in the case of the federal judges, is the President, should have the broadest authority to recruit from all qualified lawyers, of whatever practice and that sort of thing.

But what worries me is that there seems to be a good-sized segment of the practice which is gradually not accepting offers of federal judgeships, as I have explained in my testimony.

So I think keeping the judgeship reasonably attractive, salary-wise, to everybody, will mean that the largest possible number of people can be considered for it, which is what I think ought to be the case with a judgeship.

Mr. **Gilman**. And just one more question, Mr. Chief Justice. Do you have any statistics about the number of federal judges who have resigned over the past year or two as a result of salary problems?

Chief Justice **Rehnquist**. If you will bear with me a minute, Mr. Gilman, I have it somewhere. Yes, it is in table 8 of Simple Fairness.

Let me summarize by saying that, from 1958 to 1974, with one exception, there was never more than one resignation a year, and in many years there were no resignations. In 1974 there were seven resignations. Then in 1975, two. And it runs along, in 1978 there were four, until about 1983. And then in 1984 there were seven resignations; in 1985, five resignations; in 1986, four resignations; in 1987, seven resignations; in 1988, three resignations.

Mr. **Gilman**. Thank you Mr. Chief Justice and thank you, Mr. Chairman.

Mr. **Ford**. I think it should be noted for the record that the footnote to the chart from which the Chief Justice has read indicates that this list of resignations does not include judges who go off the bench by taking senior status. It does not reflect the total number of judges we are losing, it only reflects those who quit before completing an expected level of service for their career.

Chief Justice **Rehnquist**. I think that is correct, Mr. Chairman.

Mr. Ford. So your numbers are kind of pure numbers in the sense if you ask the question, "how many judges have we lost," it is a much larger number than that?

Chief Justice Rehnquist. I think it would be larger.

Mr. Ford. I have heard the figure, from some of my friends on the Court, that in the last 15 years, the total number of judges leaving before reaching retirement, or immediately upon reaching their retirement age, equals the number who had done that since the time of the first Court.

Chief Justice Rehnquist. Certainly, from the statistics I just glanced over, that would be quite possible. Since my statistics date only from 1958, I just cannot confirm, because I do not know, of my own knowledge, what the situation was before 1958. I do think, though, that resignations were very, very few.

Thomas Jefferson, back in his time, I know, was complaining about all the Federalists who held over into his Administration, made the comment about federal officials generally that few die and none resign. And I think that was certainly true for a long, long time. There just were not resignations.

Mr. Ford. Ms. Schroeder?

Ms. Schroeder. Thank you, Mr. Chairman.

I want to make sure I understand what you are saying. Are you for decoupling the judges from the other branches?

Chief Justice Rehnquist. I do not really have a position on that, Ms. Schroeder. I think that the case that the judges have made out and the ones that the Judicial Conference responded to, shows a current need for an increase in their salaries.

We simply did not feel it was within our competence to say what should be the salaries of members of Congress or what should be the salaries of the Senior Executive Service. But if this committee should feel that those salaries should be of the same order or exactly the same as one or more classes of federal judges, certainly that would be entirely consistent with our position.

Ms. Schroeder. So one of the things that troubles me, and I want to make sure that we are not in conflict here, as I see the Constitution they really say that there should be three equal branches. And equality in our society deals with economic worth in many instances. You are not saying that the judicial branch should be more equal than the other branches?

Chief Justice Rehnquist. Not at all. We just felt that since the Judicial Conference can speak only for the judicial branch, it would have seemed presumptuous for the Judicial Conference to say now, here is what we think judges should make, and here is what we think members of Congress should make, and here is what we think the Senior Executive Service should make. I think that is fine for the Quadrennial Commission to say or for a committee of Congress, which ultimately has the decision to make. We simply did not think that was the thing for the Judicial Conference to say.

Ms. Schroeder. But the Judicial Conference is not saying that they should be decoupled?

Chief Justice Rehnquist. No.

Ms. Schroeder. And they are not quarreling with the Quadrennial Commission trying to keep everybody in parity?

Chief Justice Rehnquist. Not at all. Not at all.

Ms. **Schroeder**. And if we do not get beyond the logjam here, you would not be asking, then, for special treatment for the Judiciary above the different branches?

Chief Justice **Rehnquist**. Well, let me phrase my answer carefully, because I take it your question suggests that if this committee should decide that no raises will be given or enacted at this time, the judges would be quite content with that. That would not be the case.

The judges feel they have made out a very good case for raises in the immediate future. And looking as best we can at the cases that have been made out for the other branches in the Quadrennial Salary Commission, we certainly think those have been made out, too.

But it would be a mistake to say that the judges would be content if this committee decided that now is simply not an opportune time to give any of the three branches a raise.

Ms. **Schroeder**. I guess what I am saying is I am trying to get why this precedent-breaking appearance. What is the magnitude of it? And the question I guess I have is: Is it because you disagree with something that has been transpiring? If it is just that you agree with what has been happening and the fact that it did not happen, everybody regrets. Or are you asking for something else? Because this is a precedent-breaking appearance.

And I must say I am troubled in your testimony on page one by your saying the greatest single problem facing the judicial branch today is salaries. I sit on Judiciary, and yesterday we had Attorney General Thornburgh appear, and he did not say the greatest problem that they had over there was salaries.

So I am a little troubled as to why we do not see that as the number one thing in sync. We all know it is a great problem, but we all know this country has a great economic problem.

Chief Justice **Rehnquist**. There is no doubt of that, Ms. Schroeder, and I think the judges are as aware of that as anyone. And I hope I have not overstated the case in saying that it is the single greatest problem confronting the Judiciary. I think I weighed my words carefully.

And I do not mean by that to say that judges sitting up on the bench deciding someone else's case are constantly thinking, how am I going to pay the rent? That certainly is not the case. But I do get around the country and I talk to a number of judges, and I used to talk to a number of judges when I was an associate justice. And the feeling among the judges has just changed quite remarkably in the last year or so.

And to the extent that I am here speaking only for the judges, it is because I think that is the only body of people I really have any commission to speak for. I think that it would be a mistake for the Chief Justice to come over here and say, now, here is how I think the pay should be adjusted in each of the three branches of government. I would suspect that would be quite unwelcome.

Ms. **Schroeder**. I guess. It is just that when we heard the Attorney General, he was talking about the overcrowding of jails and the problems of sentencing and the problems with drugs. He had a whole list of things that were really very heavy.

And, to me, I think outside of Washington it all looks like we have all gotten so terribly greedy with the incredible debt that we have got, and it almost looks like this hearing is the closing of the greed cycle, you know, that everybody comes in and says we have got to have more money, forget this idea of public service, by golly, me first.

And, therefore, I must say, when I compare the two, I have to say the Attorney General was a little more balanced in looking at some other problems, rather than the greatest single problem of his branch was wages. So I find this kind of tragic.

Thank you, Mr. Chairman.

Mr. FORD. I just want to observe that your hearings may have had another purpose. As we divide up these hearings and go into specific legislative proposals, I believe Mr. Ackerman is extending invitations to representatives of the Justice Department to discuss specifically pay issues. So there will be another opportunity for the committee to get the opinions of the Justice Department specifically with respect to pay.

Mr. Horton?

Mr. HORTON. Thank you, Mr. Chairman.

I want to join with you and others in welcoming the Chief Justice. And I think his testimony has been very helpful to put in proper perspective the problems we have in the judiciary. I think we must look at, as you aptly put it, the executive and the legislative. Unfortunately, we had an opportunity earlier in the year and we did not take advantage of that opportunity. We find ourselves in a situation in which we have to assess not only the judiciary, but also the legislative and the executive branches.

The testimony to this point has indicated the executive had some very serious problems with regard to filling positions. And what you are saying to us today is that you anticipate that if there is not a pay increase, as far as the judicial system is concerned, that we will have some severe problems there.

When we had testimony a couple of years ago, the former Chief Justice did make some reference to honorariums. Is it legal or possible for judges to accept honorarium?

Chief Justice REHNQUIST. Yes, it is, Mr. Horton. They are subject to the statutory limitation of $2,000 per speech, appearance, or article.

Mr. HORTON. Are you limited to the amount?

Chief Justice REHNQUIST. No, we are not limited to a total amount—only to per appearance, per article limitation.

Mr. HORTON. In the House it is 30 percent and the Senate, I think, is 40 percent.

I am not sure what the law is regarding the judiciary. Is this something that has been adopted by the Judiciary, or is this a statute that we have adopted?

Chief Justice REHNQUIST. No, the $2,000 limit per appearance is by statute.

Mr. HORTON. In other words, it is your understanding that there is a limitation on outside earned income, which would include honoraria?

Chief Justice REHNQUIST. There is no overall limit on outside earned income applicable to the judiciary. Honoraria are considered fees for appearing and making a speech or writing an article, which are limited by statute to $2,000 per occurrence.

I think there are a minority of federal judges who teach in law school. And I do not think the stipend they receive for teaching in a regular program of instruction is considered an honorarium.

Mr. **HORTON**. That is earned income?

Chief Justice **REHNQUIST**. That is earned income.

Mr. **HORTON**. Do you have a limitation on earned income?

Chief Justice **REHNQUIST**. I do not believe so. Other than limitations per appearance on honoraria, I do not believe there is a limitation on outside earned income.

Mr. **HORTON**. Do you have to disclose the honoraria?

Chief Justice **REHNQUIST**. Yes.

Mr. **HORTON**. There is a procedure then for the judges of the federal system to disclose honoraria?

Chief Justice **REHNQUIST**. Yes, we have to file a financial disclosure statement every May 15th. And you have to disclose all outside earned income.

Mr. **HORTON**. I did not have a chance to look through this booklet, "Simple Fairness," but are there any statistics in there with regard to the use of honoraria by the Court, by the judges, on outside earned income?

Chief Justice **REHNQUIST**. I don't believe "Simple Fairness", has that date. Judge Stapleton from Wilmington recently testified before a subcommittee of the Judiciary Committee on that point. And the Judicial Conference considered it at the same time that we were discussing the possibility of asking Congress for a pay raise for the judges.

And the feeling of the Judicial Conference was that the Code of Conduct for Judges rather rigorously limits the situations in which a judge may give a speech. For example, it would be inconceivable for a judge, because of the nature of the judicial business, to appear before any group that had a matter before the Court. That is totally proscribed by the Code of Conduct.

The typical situation in which a judge accepts an honorarium, and I certainly have accepted honoraria under these circumstances, is some sort of endowed lecture at a law school. And each year they try to get somebody else to come and give something which is really supposed to amount not to an original contribution to human knowledge, but something that you have worked on yourself. And they always want to publish it in their law review. So you cannot give the same thing at several different places; you have to do something different each time.

Now, the law school does not invite the judge for any other reason that I know of other than they want the judge to give a lecture to the law students. And so long as there is a set limit on the fee you can accept, the Judicial Conference felt that no further restrictions were needed.

Mr. **HORTON**. Are there any restrictions with regard to writing books?

Chief Justice **REHNQUIST**. No, there are not. Having recently written a book, I can testify to that fact—that I report the royalties I receive in my financial disclosure statement. But, as the law now stands, that is not an honorarium, and it is not subject to the honorarium limitation.

Mr. **Horton**. Last year, the commission proposed that members of the legislative branch be limited so that they could have no outside income, including honoraria.

I do not recall now whether that was applicable to the judiciary.

In your proposal, have you taken into consideration removing the opportunity to receive honoraria or other earned income if there is a pay increase?

Chief Justice **Rehnquist**. The proposal of the Judicial Conference for which I speak is a freestanding proposal. It does not consider one way or the other the honorarium situation. But, as I mentioned earlier, at the same time that the Conference in its March meeting discussed the desirability of a pay increase, it discussed whether or not there ought to be a limitation on honoraria other than the one that presently obtains in the case of the judiciary, and the feeling of the Judicial Conference was that because the code of conduct so stringently regulates now any danger of impropriety in connection with an honorarium, that there was no need for change on that.

Mr. **Ford**. If the gentleman would yield, it might be of some help to get an idea of where these things start floating around in the media.

The President's Commission on Ethics Reform submitted in March of this year a document entitled "To Serve With Honor—A Report of the President's Commission on Federal Ethics Law." That is considered by us to be the recommendations of the President's Commission after he submitted it to us for legislative action, or change in our rules in some instances, if we decide that what he is recommending is correct.

The reason the discussion of honoraria with respect to judges comes into play is that while the commission found that the limitation was generally the question of ethics, that it should neither be improper or something that could be perceived as an improper appearance by a judge, because it is something that heretofore we have been willing to expect that people who were lawyers and judges were mature enough to make judgments on.

Their recommendation, however, is as follows: (1) that federal employees in all three branches be prohibited from receiving honoraria; (2) that existing criminal prohibitions against supplementing government salaries apply to all three branches; and, (3), that senior employees in all three branches be covered by a uniform percentage cap on outside earned income, but that the President have authority to exempt categories of earned income from the cap that do not present significant issues of ethical propriety or interfere with the full performance of job duties.

If, indeed, the President had hoped to have a commission draw attention to the fact that they wanted a very rigid and very severe standard, this is certainly going to get that kind of reaction. I do not know how willing the Congress would be because what the commission has said is that whatever you do, you ought to apply it equally to all three branches. That is in part in answer to Mrs. Schroeder's question. I think that is where this discussion of judges and honoraria came from. I had never heard it before the newspaper stories and magazine stories about this commission's action came out.

Actually I started reading about this some time ago because unlike other commissions, this one kept giving to the newspapers bits and pieces of what they were talking about. Some of the things that most excited people when they appeared in the papers originally are not here because the commission, when it got down to deliberating on what it was willing to sign off on, considerably modified the rumors that had been promoted by leaks, if you will, from members of the commission during their period of consideration.

I think it should be made very clear here that the only place that we are aware of that you can find a recommendation that deals directly with honoraria for judges is in the recommendations from this Presidential commission. I am not aware that anybody has introduced the first piece of legislation in either house to implement any provision in this recommendation. It is too new. We have not had time to look at it. Obviously, this puts everybody on notice. We are going to have some difficult problems to wrestle with.

Mr. HORTON. Thank you, Mr. Chairman. I was just interested as to whether or not the judicial conference had taken honoraria up when they met, and I do appreciate the testimony, Mr. Chief Justice. I think it has been very helpful to our consideration of this very difficult problem. Thank you.

Mr. FORD. Mr. Garcia.

Mr. GARCIA. Mr. Chairman, before I address anything to the Chief Justice, I would like to ask you a question. Do you expect anytime in the near future that we will be going back to the floor of the House? As Chairman of this committee you have some responsibility at that end. Will we be going back to the floor of the House to discuss pay raises in any way?

Mr. FORD. When I first came here, a chairman could answer a question like that because he decided whether or not a bill was going to the floor. However, we have reformed the rules and democratized the process, particularly on this committee. As you may have noted, for about the last five years, this committee has voted unanimously to report legislation on important issues. We work things out. Therefore, I would not presume to tell anybody what this committee is going to decide to do.

I am prepared to tell you that I am going to hope that the subcommittees will have something for us to look at by summertime or early fall and then when we see what they have labored and brought forth, then we will come together and decide what we ought to do about it.

A decision on whether we take legislation to the floor and what the legislation will look like will have to be reached by a consensus of this committee.

Mr. GARCIA. Well, Mr. Chairman and Chief Justice, as one who was one of the 48 who voted for that pay raise, I would just like to say that I just hope that the next time we go through the process that it would be a process in which we would have the representatives of the various branches of the government who would be affected. By that I mean the administrative end of this triangle, and

I would hope that we would be fortunate enough to get their testimony as we have yours today.

It seems to me that the pay raise debate of 1989 was probably one of the worst handled debates I have ever witnessed in my entire life.

I say that because there is no question that the need is there and there is no question that the outrage of judges from various parts of the country for those of us who voted for the pay raise—I can show you at least a dozen letters that we have received from federal judges thanking us for our vote to that end, and it just seems to me that I would hope that the next time we go, if we go—and we do not know when that is going to be based on the Chairman's statement—but that we would get that type of public relations output before we take it to the floor for a vote.

There is no question in my mind. I think that the judges deserve a raise. I think it is important and necessary, and I know a few people who have left government because of that.

And all I can say is I thank you for being here, Chief Justice. I think your input and your office in itself speaks highly of the need for the judicial branch of government to get this pay raise.

Mr. **Ford**. Mrs. Morella.

Mrs. **Morella**. Thank you.

Mrs. **Morella**. I thank you, Mr. Chief Justice, for appearing before us. Obviously, that shows the depth of your feelings about the importance of this particular issue.

You know, Monday past was Law Day, and I had occasion to look at part of de Tocqueville's "Democracy in America" where he talks about the important people in the United States, and he says the most important people are the lawyers and the law—the power and influence of lawyers.

And, again, reiterating the feeling that we have in America that was quoted in the Washington Post in an editorial in Legal Services, they said, "If you are right and the other person is wrong, the law and lawyers will make sure that right prevails." So, this is an attitude we have about the importance of our judicial system and administration of justice.

All that being said, I agree, I think, that they all deserve a raise. The president has submitted to Congress in his ethics package 25 percent for the judiciary and then some selected spots to be determined in critical areas for some of the other top officials in government.

That really poses a dilemma, and this picks up on some of the things that were said today. I know you feel that all the branches should be given some kind of remuneration. Do you think, however, that if one branch were to get it, let us say the judicial branch, that it would tend to be demoralizing to the executive and the SES people and the other people who were included in the Quadrennial Commission? Can you see that that could be a problem?

Chief Justice Rehnquist. Yes, I certainly can.

Mrs. **Morella**. I do not want to put you on the spot. If it was the only thing that we could vote on, would you feel that we should vote for the judicial branch if the others were not occluded?

Chief Justice **Rehnquist**. I think I have to say, given my assignment from the Judicial Conference, that we hope that pay raises could be given across the board, not in the amounts but in the order of magnitude and percentages that the Quadrennial Commission recommended.

But I would not be faithful to my assignment if I were to say that if this committee were to decide that the time is not right for the legislative branch and for the executive branch that we would cheerfully acquiesce, that for that reason nothing ought to be done for the judicial branch.

Mrs. **MORELLA**. That is what I wanted to—

Chief Justice **REHNQUIST**. We would obviously acquiesce since we have no choice, but it would not be cheerful.

Mrs. **MORELLA**. Well, as you know, this committee is trying to get equity for all of those who deserve it. But I am also curious about the, let us say, administrative law judges and some other federal judges that would not be part of the judicial conference statement that was made about the 30 percent increase. I know there is difficulty recruiting administrative law judges.

I just wondered if you might want to comment on that and do you feel that the scope of your testimony would be saying to us and to Congress that—

Chief Justice **REHNQUIST**. Yes, basically the thing about the judges' situation, the critical thing about it is that judges have to be lawyers. Anyone who is offered a job as a judge is necessarily going to be comparing the financial inducements of that job with what the person is presently making as a lawyer.

As you pointed out, it carries over to a number of positions in Congress and positions in the executive branch where the person also must be a lawyer. Exactly the same considerations apply there.

Mrs. **MORELLA**. So, you would hope that we would search further, go more in depth in terms of the entire federal salary scale.

Chief Justice **REHNQUIST**. Certainly. The reason my testimony has been about lawyers has been because having been trained as a lawyer, most of my friends are lawyers. That is the sort of thing that I know most about. But, I would be foolish not to recognize that with any sort of skilled position, the same is undoubtedly true. I just do not know as much about those.

Mrs. **MORELLA**. Were you prompted, Mr. Chief Justice, to come here by others or did you feel so strongly that you said I am going to appear before that committee?

Chief Justice Rehnquist: When I received the invitation from the committee, I thought I ought to do it.

Mrs. **MORELLA**. Well, we appreciate your being here, and I thank you. And thank you, Mr. Chairman.

Mr. **FORD**. Thank you. Mr. Ackerman.

Mr. **ACKERMAN**. Thank you very much, Mr. Chairman.

Mr. Chief Justice, thank you very much for your appearance here today. I can imagine how difficult a decision it must have been for you to come here, especially on this issue, and I think it underscores for most of us the importance that you yourself and the conference place on this matter.

Mr. Chief Justice, what we have here is not really an economic problem. It is not really a financial problem. We have a political problem. I read in the paper the other day that the chief executive officer of Disneyland all by himself makes more than the 535 members of the U.S. Senate and House of Representatives combined earned, and I did not see any hue and cry from the general public who also directly pay through user fees that kind of salary.

There seems to be a tremendous disparity in people's values in what they accept. If you look at it from the pure amusement value alone, I guess we certainly have provided them with a heck of a lot more laughs. And when it comes to taking them for rides—but the political problem—the political problem is one that we have to very seriously look at and we on the committee and in the Congress are also faced with the dilemma and that is the dilemma of whether or not we decouple the issues.

There are many of us that believe that the problem is just as severe certainly in the executive and the legislative as it is in the judicial branches.

Prior to your appearance here today, we felt very lonely. We have been in the tank all by ourselves. Nobody has been really making the pitch of the dire need, and there have been just those of us in this branch who are taking all of the heat.

We face the problem on a practical level of if we decide to cut you off, then basically what we have done forever is set ourselves adrift never being able to make our case against those who want to rile against pay raises for public employees.

There seems to be almost universal recognition around here, I think, that if there is ever going to be a needed pay raise for members of the legislature, that we have to stay coupled with the judiciary.

I guess the idea solution, if somehow we could couple ourselves with the talk show hosts, maybe that would solve the whole problem. But the problem remains political.

It is really demeaning to learn that members of our federal judiciary have to go around just like we do with tin cups in our hands accepting honoraria from people who are willing to listen to us and help pay for our expenses rather than the public that we serve expressing a willingness to understand the basic necessities of life and what the competition out there has to offer and the sacrifices that those in public service make when they are faced with real choices as to where they want to be employed.

How would you address the fact that you so readily are willing and recognize the need for the judiciary to have an increase in light of the political realities that we face?

Chief Justice REHNQUIST. Well, Mr. Ackerman, I must say I am glad I am not in Congress and have to make that decision. I am sure it is much easier for the people affected, such as the representatives or the judges or representatives of the executive branch to come before you and say, look, we have this demonstrated need.

But I am aware, perhaps not to the extent you are but I am certainly aware of it, of the very widespread attitude in society that it is fine if Orel Hershiser makes $2.5 million a year, whatever he makes, but that public servants should come as cheaply as possible.

And I am under no illusion that that applies only to the judicial branch; I am sure that the same attitude is prevalent among the people with respect to members of Congress, with respect to senior executive people.

And my own feeling is that the case was made out by the Quadrennial Salary Commission for substantial raises for members of Congress, for the Senior Executive Service and for judges. And it is almost a mistake to talk about them as raises in the sense that you are trying to catapult these groups to a position above where they were. What it is, is simply a restoration to the place where salaries were 20 years ago. It is not anything that is a brand new jump for them at all.

But I am aware of the public attitude and of the difficulties this committee is going to face.

Mr. **Ackerman**. Since we voted on the pay raise issue and defeated it, have you noticed or heard that there will be more defections from the Federal Judiciary coming up?

Chief Justice **Rehnquist**. Yes. At the time the vote took place I was teaching a three-or four-day course at the University of Arizona College of Law in Tucson. And because that is the state in which I practiced for 16 years, I know a number of the judges and a number of the lawyers down there and saw them right at the time.

And I am talking about just a handful of judges now because that is all the federal judges there are. There are not even a handful in Tucson, there may be three or four; and five or six, maybe, in Phoenix.

And one of the judges there, whom I know, went on the bench at a relatively young age. His kids are just getting to an age where they are thinking about college. And he was really very much down in the mouth the very day the vote took place.

And, again, I realize the extraordinary difficulty of explaining to people who make much less than $89,500 a year why it is necessary to raise the pay of someone who presently makes $89,500 a year, 25 percent, 30 percent, whatever you are talking about. And I have no ready answer to that.

But it seems to me that as we were talking before we came out here, Ms. Morella, people are reconciled to the idea that you are going to have to pay a first-rate school superintendent a considerable amount of money.

It seems to me that if people would just think a little more deeply about it, they would see that the federal judges, as an example—you can substitute the Congress or the executive—these are the people who are deciding their rights; they are the people deciding whether the plaintiff wins or the defendant wins. They have to interpret very complicated federal statutes and constitutional provisions.

And it seems to me that for the same reason you want the very best doctor available when you are ill, you want the very best judges available in the Federal Judiciary.

Mr. **Ackerman**. I appreciate those sentiments.

There are so many people in line with the argument you just made who say if you do not like it get out. I mean, we get told that all the time, very rudely, I might add. You know what the pay is. And for every judge we have, there are 50 other guys lined up to take that spot who will do it cheaper.

To me, I personally find it mind-boggling. It is like people if they are willing to fly in an airplane that was built by the lowest bidder.

Mr. **Ford**. Would the gentleman yield?

Mr. **Ackerman**. I would be glad to yield to the chairman.

Mr. **Ford**. We are all painfully aware of the people who say you knew what the salary was when you ran for the job. But as one of my Republican colleagues who did vote for the pay raise said when we were on the floor looking up at all the red lights, you know it is true that I knew what it paid, but I did not expect it would be cut in purchasing power 30 percent while I was here.

You know, there is a presumption that nobody leaves. I checked at the beginning of this year and found that 56 percent of the Members in the House were elected in 1980 or later. Yet I still read newspaper articles that say maybe these people stay there too long. Some of us do, obviously, in the opinion of people who disagree with us.

The average service here is about eight years. Yet we have editorials all over the place saying there ought to be a limitation on terms so that you can only serve eight years. That is already happening when literally two-thirds of the House is turning over. That is a contrast from two decades ago. A good deal of it can be seen by the tendency for a period of time of electing younger people to the Congress before their children reached college age. Then the shock hits them after a few terms, when they find that they have not been able to put anything away for college, and they say, "you know, my ego trip is now too expensive for my family, I have got to go do the right thing by them."

Some of the people, in both parties that I have observed, that are reaching the peak of their expertise in the field that they picked to specialize in here are forced by those kind of circumstances to leave.

Nobody on the outside is going to have any sympathy for that, because the answer will be, oh, there are plenty of people that want to be in Congress. I submit that we would have no trouble filling the federal bench if the pay was zero and we were willing to blink our eyes at the qualifications of the people who had some other reason why they wanted to sit on that court, a special interest that they wanted to serve.

I submit that you could reduce the Congress to zero pay and not have a single empty seat, because there is a special interest out there someplace that would want to take it for their own purposes. The protection against that has to be in retaining people who are not motivated in that way in the first instance.

I have to say that in 25 years I am not nearly as cynical as I expect to be before I finish my career here. I can say in all honesty when young people ask me, is that most of the people I have met in the executive, judicial, and legislative branch in my lifetime have been honorable people that I was pleased to be associated with and proud to say I have known.

In a whole career in state and local government and here, that spans some 35 years of being elected to something, that many people, I would be hard pressed to give you a name for each of my fingers of a person who I thought was such a thorough-going scoundrel that that person should not have been in public service.

The American people are not willing to believe that. I think they are willing to believe when they see the Chief Justice here that there is a serious problem that ought to be addressed. I hope that the members of Congress who will have access to the records of these proceedings will recognize that we are about serious business here and that there is going to be blame enough for everybody if we fiddle while Rome burns.

That is an allegory that I never understood until recently I started thinking, what will they say, Mr. Chairman, about your committee a few years from now when the people find out that we are not conducting research on AIDS, heart disease and stroke, or cancer; that we are not keeping up with the Russians in the space race or other technologies; not collecting the taxes, not apprehending a sufficient number of drug dealers. Who was there and what were they doing when it was all coming apart?

It scares me to wake up in the middle of the night and realize that the answer to that is John Glenn's committee in the Senate and my committee in the House. We do not have any choice, we wanted on this committee, nobody drafted me to be chairman.

I agree with the gentlemen that have spoken here, this is a political hot potato; there is nobody else to catch it but us, and we appreciate the help we can get from everybody. I apologize for taking off, but I do not know anybody that is more frustrated by public reaction out there than I am.

I hope, Mr. Chief Justice, you understand that this is probably a unique group. There is not anybody on this committee that does not have the courage to do what is right when it comes to issues like we are discussing. I wish I could say the same for both bodies of the Congress in total, but that is because the others do not hear the kind of things that the members of this committee hear and they do not know as much about the federal work force as the members of this committee.

I trust that we are going to be able to do something positive.

Mr. Ackerman?

Mr. ACKERMAN. Thank you, Mr. Chairman.

Mr. FORD. Incidentally, he is the chairman of the Compensation and Employee Benefits Subcommittee, who has to work out the little finite details like, how much and to whom, before we finish.

Mr. ACKERMAN. I thank you for that responsibility, Mr. Chairman.

I would even carry your scenario and suggestion one step further. If that is what the American people want, the cheapest Judiciary and the cheapest Congress they can get, not only can they get 435 people to fill all of our seats for free, but carrying it a step further, we could probably wipe out the whole federal deficit by going to a stock exchange-type of thing and selling the seats.

I mean, I have got a guy named Louie in Brooklyn who is willing to buy five seats just by himself. [Laughter.]

Mr. ACKERMAN. There is a whole bunch of Japanese guys I know that would come in here and straighten the whole thing out right away. And we could fill all the federal coffers.

I think I have probably said a little too much at this time, Mr. Chairman. [Laughter.]

Mr. **Ackerman**. Let me just state, in line with your mandate, that our subcommittee will be conducting hearings this summer in July and August, and we will have people from all agencies and all branches of the government; and to express my great admiration for the Chief Justice for his willingness to come down here to help highlight what the real problem is and to get into the tank with us.

Our hat is off to you.

Chief Justice **Rehnquist**. Thank you.

Mr. **Ford**. Mr. Chandler?

Mr. **Chandler**. Mr. Chief Justice, I learned that most of the questions I wanted to ask have already been asked. I would just like to say that it is a privilege to be here breaking precedent today with your appearance before this committee. I think we are all making history in a most interesting way.

And I want to compliment you for doing that. Because I think what you are doing is what many of us have tried to do: stand up for what we believe to be the right thing to do about compensation for judges, federal appointees and for members of Congress.

I would like to compliment you on your speech, too. I appreciate that, Mr. Chairman. Forty-eight people voted against the resolution denying the pay raise. I was among them. I would just like the record to show that that was a positive vote in my district and in the state. There was great support, especially for judges—probably less so for those of us who are scoundrels, but even for the appointed federal officials. I found a great interest among people in the Federal Government being a good, quality employer.

So I think what we need to do is give more Bill Ford speeches, do more of what you are doing, sir, and tell our story. Because I think it is a very good story to tell. And I compliment you for coming here and thank you for letting me be a part of history.

Chief Justice **Rehnquist**. Thank you, Mr. Chandler.

Mr. **Ford**. Thank you.

Mr. McCloskey?

Mr. **McCloskey**. Thank you very much, Mr. Chairman.

And I, too, welcome the Chief Justice and very much admire his courage and integrity for being here. And as Mr. Ford said a few minutes ago, I do not think you could find a more supportive or concerned committee, Mr. Chief Justice, as far as the issue and the concern that you raised today. We have been through it in different ways, conversationally and politically, today, but it is a major political, and I might say, ethical issue.

In all seriousness, I had about four to six people in my district for the pay raise, and several of them were federal judges and relatives of federal judges. And quite frankly, that was about it. And my knowledge of the polls in my district probably showed less sympathy for a raise for judges and other federal officials than even for the Congress by a margin of about 10 percent.

Be that as it may, a practical question, and I may get into a more general question or observation, but what do you say, Mr. Chief Justice, about the idea of locality pay? As one of my judges in Evansville said, well, it is tough here, but I can make it. But he really feels for the judge in New York City making $89,000 trying to get his kids through NYU, to say nothing of the problems of Harvard and Yale and what not. Is locality pay differential a promising concept in your mind for the Judiciary?

Chief Justice **Rehnquist**. I have not fully thought it through, Mr. McCloskey. And I certainly do not know enough about the argument's pros and cons to take a definite position. I can say this, that when I first moved to Arizona and was admitted to the bar there in the early 1950s, the state law, as I recall, permitted the board of supervisors in the two populous counties of the state, Maricopa and Pima, to supplement the Superior Court salaries. Whereas in the so-called cow counties, the other 12 counties, the judges got a lesser amount.

And as I recall, this was a cause of considerable friction. Because the idea current at the time and still current, both in the State Judiciary and in the Federal Judiciary is that judges should move around to where the cases are. If your own district has a fairly light load, then you should move to some other district that has a heavy load.

And the judges who sat in the rural counties regularly got a lesser amount of money, when they came to Phoenix to try cases. They were sitting in one courtroom and getting so much a month, and the judge in the very next courtroom, handling the same kind of a case was getting more. There was a good deal of friction and complaint, and that system was ultimately abolished by the legislature.

Now, that very minor parallel certainly is not dispositive, I realize, on the issue of locality pay, but it is one thing that you would have to look out for.

Mr. **McCloskey**. Could I ask, it has been discussed previously but I do not think we went into it in any detail, or you did not make any definitive observations, but, for lack of a better term, how big a deal is honoraria for the Judiciary? How extensive is it from the Supreme Court through the District judge levels? Is it possible that we could approve the pay raises that the Judicial Conference suggests and, in effect, have the same old problem going on if the honoraria were to be abolished?

Chief Justice **Rehnquist**. I would say that 95 percent of federal judges do not have an opportunity to make anything significant in the way of honoraria. And to them, the pay raise is obviously far more important than any limitation or lack of it on honoraria.

So when you talk about honoraria you are talking about a relatively small percentage of the Federal Judiciary.

Mr. **McCloskey**. Would you have any figures with you today, Mr. Chief Justice, on the average amount of outside income, honoraria and otherwise, on the Federal Judiciary?

Chief Justice **Rehnquist**. I have here, Mr. McCloskey, the statement that Circuit Judge Walter Stapleton made before the House Judiciary Subcommittee on the Courts. And I am told that there is in there some statement about those averages. I do not have it right at my fingertips. If I could offer this in the record in some way it would be available to you.

Mr. **McCloskey**. I thank you for that, Mr. Chief Justice.

[The information referred to follows:]

[The following information was excerpted from the statement referred to above by Chief Judge Rehnquist, namely pp. 10–12 of Circuit Judge Walter Stapleton's statement before the House Judiciary Committee on April 27, 1989.]

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The Existing Law

Questionable honoraria such as the ethics Commission seeks to prevent are already banned by the Code of Conduct for United States Judges. Canon 6 regulates the receipt of compensation by a judge for extra-judicial activities. It prohibits a judge from receiving compensation for speeches and the like unless (1) the amount is reasonable in light of the services performed and does not exceed what a person who is not a judge would receive for the same services, and (2) the source of the compensation is such that the judge's receipt thereof will not "give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety."

The Codes of Conduct for covered employees contain comparable provisions which prohibit honoraria for judicial employees.

Comment

1. Like the Commission, the Conference is "aware of no special problems associated with receipt of honoraria within the judiciary." Report, p. 35. Judges are forbidden from *ex parte* relationships in any matters before them. Unlike decisionmakers in the legislative and executive branches, judges operate in an insulated system within which it is well established, not only as a matter of constitutional due process but under long-standing constraints recognised by both bench and bar, that only certain types of access to a judge are proper. Within those types, access is assured, and does not, indeed may

not, involve special "lobbying" efforts such as could be appropriate to convey views in the legislative and executive processes.

In keeping with the above, the existing canons clearly prohibit judges from accepting compensation for speaking to partisan or special interest groups. Canon 6 also precludes compensation for any kind of speech or lecture or writing in excess of that which would be received by a non-judge for the same service; this assures that no judge will exploit his or her position for his or her own benefit. By also precluding receipt of compensation from any source that would give the appearance of impropriety, Canon 6 forecloses payments from anyone whose interests are likely to come before the judge's court.

2. Since the kinds of honoraria that erode public confidence in government are already prohibited in the judiciary, the Conference perceives no need for further legislation barring honoraria for judicial officers and employees. However, should the President deem it desirable to seek legislation with respect to the receipt of honoraria in all three branches, the Conference has two recommendations:

(a) Legislation that speaks in terms of the source of the payment and establishes an objective limitation based on the amount a private citizen would receive for the same service will prove far more satisfactory than legislation which attempts to define "honoraria" solely in terms of activities. In this sense, the Conference believes Canon 6 provides a helpful model.

(b) While the Commission exempts from the ban on honoraria payment for teaching or legitimate publishing, its reference to "continuing activities" is a cause for concern. Any honoraria legislation applicable to the judiciary should clearly preserve the right to receive compensation for legitimate teaching activities that are not part of a regular law school course; delivering endowed lectures (e.g. the Holmes Lectures at Harvard) and participating in continuing legal education programs are two prominent examples. The judiciary has traditionally provided a substantial part of the intellectual and educational leadership for the legal profession in the United States and it is important that members of the judiciary continue to fulfill this responsibility. These activities benefit the judiciary, too, in that members of the judiciary who participate in the intellectual ferment of academia can draw upon these resources in their performance of judicial functions.

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Mr. **McCloskey**. On the honoraria opportunities, are all those, in effect, law schools and non-partisan think tanks and good-government foundations, or does it ever get to be an appearance before a national or state chamber of commerce, Texas Oil and Gas, or whatever? Anything like that? I just wonder what the cut-off line is on propriety or good judgment there.

Chief Justice **Rehnquist**. I can tell you my own practice, Mr. McCloskey. And I have discussed it with very few other people. You know, it is just not the thing you talk about a great deal, not because there is anything wrong with talking about it, but it just does not come up.

I am trying to think of any honorarium I have ever accepted that was not from a law school or for an endowed lecture.

Mr. **McCloskey**. You have been at Indiana University.

Chief Justice **Rehnquist**. Yes, I did, the year my nomination for Chief Justice was pending. Any other speaking opportunities would surely be before some sort of a foundation or non-partisan group. It would be inconceivable, I think, for any judge to speak, with or without pay, before a meeting of an oil and gas association or the chamber of commerce, or a labor union, except, perhaps, as a member of a panel, you know, where you felt there was some balance. But it would surely not be for money.

Mr. **McCloskey**. It would not have an honorarium involved.

Maybe an observation, maybe for some advice from you: as we have to face our constituents, and many of them are quite low income, at least in my area, Martin County, Indiana, and this has been said in other ways today, where a $10,000 or $12,000 a year job would, in effect, be considered the opportunity of a lifetime. They cannot understand why anyone cannot make it on $89,000, when it puts us all in the upper two percent.

And, at the same time, as you know, we are all human beings together. If you are fortunate enough to have a status labor job, say, making $12 an hour, which is good money in southern Indiana, it is outstanding money, and your employer is telling you to take $9 or $10 or hit the road, Bub, could the argument be made by some gadfly in our political discussions that the free market is working: these justices and others are not leaving, and indeed, as Nader has pointed out, $89,000 probably far exceeds the average full tenured law school professor's salary?

I am just saying, is there not a free market analogy that everyone wants more money, but it has got to stop somewhere?

Chief Justice **Rehnquist**. Again, I think it depends in part on what you are looking at. I am not sure of the statistics as to law school professors, but very likely if you take law school professors just en bloc across the country, $89,500 would be more than that. And so far as the person who is making $12 an hour and is told to take $10, I have no very good answer to that.

I think the answer I would give is that some day that person may be either a plaintiff or a defendant in a federal court action, and I have never felt when I was raising children or thinking about my family that I wanted to go to a doctor who made no more money than I did. I wanted to go to a good doctor.

It seems to me one can think of it the same way about being a judge. Do you want the judge on the bench who hears your case to be someone who makes only a certain amount more than you do? You want the person to be a capable, experienced, fair, impartial judge.

Mr. McCloskey. Thank you, Mr. Chief Justice. Thank you, Mr. Chairman.

Mr. Ford. Mr. Sikorski.

Mr. Sikorski. Thank you, Mr. Chairman.

I, too, want to commend you, Mr. Chief Justice, for coming here and for your statement. I think most of us feel when you put the black robe on and walk into the hushed chambers that we get a special wisdom, and because of that I would like to ask you given what happened here on the Quadrennial Commission's recommendation and its defeat and given that the polls show that there is 80-percent disapproval rating, what can be done to sway public opinion?

Chief Justice Rehnquist. I wish I had a better answer for you, Mr. Sikorski.

I remember in my annual statement 2 years ago which I issue on the last day of the year—and it is a very slow news day, so it sometimes gets some coverage—I said at that time I thought that it would be a good idea to have the more modest pay raise that was in question then, and I have never gotten more mail in response to anything I have done in 17 years on the Supreme Court, any opinion I have written than that one statement. It was letters very much like Congressman McCloskey mentioned saying that, you know, someone was earning $25,000 or $30,000 a year. They had a mortgage on their house. They wanted to educate their kids. Here I wanted my salary raised to $115,000 a year.

The answer, it seems to me, is that lawyers are very highly specialized, trained people who have taken the trouble—three years after a bachelor's degree—gone on to law school, been admitted to the bar, practiced law for a number of years in order to even be considered for that job. And then, in order to get the very best for the job, you need to offer not what is comparable with private practice, but something that enables them to live a reasonably comfortable existence and educate their kids.

Mr. Sikorski. Would it have something to do with issues that you have to deal with on a personal, daily basis specifically? The right thing to do might not be the popular thing to do.

Chief Justice Rehnquist. I am sure that is true. And I think a lot of us in the judiciary tend to think that just as you suggest, it is our job to decide these things as we see them in the Constitution, in the laws.

We are not supposed to be responsive to public opinion. Congress, of course, must decide everything according to a majority vote and be responsive to how their constituents feel.

But very likely your suggestion—and I defer to your judgment on it—is quite correct. But there are times when Congress must take the sort of responsibility that Chairman Ford has suggested. Future generations may ask, "Where were you when all these things were happening?" And the people will thank you in the long run for doing something that may be unpopular in the short run.

Mr. **Sikorski**. I am glad I do not have to practice before you. I began by asking you for your opinion, and you ended up citing my opinion and passing it back to me. Thank you, I think.

Thank you, Mr. Chairman.

Mr. **Ford**. Mr. Dymally.

Mr. **Dymally**. Thank you, Mr. Chairman.

Mr. Chief Justice, I want to join with my colleagues in thanking you for coming today and displaying such courage on behalf of your colleagues. From time to time a federal judge communicates with my office about the developments taking place. I try to be very discreet and not return his call. In fact, I have my staff do it instead.

You will be very saddened to hear when I relay the message that the chairman of the committee is not very optimistic that this measure will go out this spring. It may not even go out this fall. It depends in large measure on a number of other factors rather than just the committee chairman's decision which is favorably disposed.

Now, having said that he did invite me to have lunch with him and went to the cafeteria—could not go across the street and pay for my pastrami—and we went into a lunchroom and I was just amazed. The place was packed. I never saw so many federal judges in one room. I was intimidated by their presence.

But by and large, the story was the same. They are unable to afford the fees of the private schools, Stanford, Claremont, USC, as the case may be in California because of the limited take-home pay and the high tuition costs.

Now, in the course of communicating with the judges through my office, I have suggested that perhaps they may want to enlighten the public by writing op-ed pieces. So, my question to you, do you find anything unethical in a federal judge writing an op-ed piece or appearing before a civic group to talk about the pay raise?

Chief Justice **Rehnquist**. Nothing occurs to me. The Code of Conduct is quite elaborate, and I would not want to say without having an opportunity to consult it that there is nothing in there that would cast any doubt on it.

But it seems to me that a federal judge writing an op-ed piece in support of the pay raise, as you suggest, would be quite different from writing an op-ed piece taking some particular position on a legal question, which I think would raise very, very significant problems under the Code. But so long as—the judges have traditionally, I think, thought it better for other people to speak up on their behalf, but there are not too many Miles Standishes around and as a result, I think they are pretty well feeling that they are going to have to say something on their own.

So, I do not see anything that would be unethical about writing an op-ed piece.

Mr. **Dymally**. What about contact their Congressman or state legislator?

Chief Justice **Rehnquist**. So long as it is——

Mr. **Dymally**. On the specific issue.

Chief Justice **Rehnquist**. On the specific issue I do not think there is anything unethical about that at all.

Mr. **Dymally**. The argument has been made that when we entered this public service, we knew what the salary was and no one invited us and in 99 percent of the cases, we were not drafted. We drafted ourselves. We solicited the job and, therefore, we ought to be satisfied with the pay raise. What is your response to that? I think it has been put to you in another form today.

Chief Justice Rehnquist: Yes. Let me put it in terms of the judges' situation, just because that is the one that I am most familiar with. A judge certainly accepts the salary that he takes when he gets on the bench.

But I think most judges, just like I daresay most Congressmen and most people in the Senior Executive Service, expect that it will keep pace with inflation; that is, that they will not be looking at a salary that is less in real dollars five years later. They obviously are entitled to think of the salary. There is much more than that five years later.

And what has happened is that the salaries that were in effect when these people took the bench, whether it be 20 years ago or ten years ago or when you are elected to Congress are simply worth less in real dollars now.

Mr. **Dymally**. Thank you, Mr. Chief Justice, and thank you, Mr. Chairman.

Mr. **Ford**. Thank you.

Mr. Chief Justice, as part of our preparation for the difficulties we are going to face in this Congress, we have armed ourselves on this committee by being the only committee that is able to say that we have Tom Sawyer as a subcommittee chairman. Now, if that is not American, nothing is. Tom.

Mr. **Sawyer**. Thank you, Mr. Chairman. Thank you, Mr. Chief Justice, for all that you have done on behalf of an important topic today.

Mr. Chairman, I would like to associate myself with not only your comments, but those of our colleagues on both sides of the table here today.

After your comment, Mr. Chairman, about my name, it is impossible to go through political life with a name like Tom Sawyer without being conscious of terms like "whitewash" and all of the implications that are involved there.

But you also cannot think about the kind of topic that we have here today—at least I cannot—without thinking what Mark Twain had to say about—in fact with that fence painting story about the character of work in which he suggested that pleasure is what we choose to do and that work consists of whatever a body is obliged to do.

In that sense, I suppose that what we are really talking about here today is that none of us in any of these jobs is lured by compensation, but rather it is compensation that makes it possible for us to do these jobs.

In that sense, Mr. Chief Justice, I just have a very brief question and that is that in the fourth and fifth paragraphs of your spoken statement here today, you suggested that you continue to support pay increases for all three branches of government within the bounds of propriety, and then you go on to say that the judicial conference adopted a resolution calling for a 30 percent pay increase.

Am I correct that that 30 percent falls within that definition of the bounds of propriety?

Chief Justice **Rehnquist**. Yes, in my view it does.

Mr. **Sawyer**. And would it also be fair to suggest that those bounds of propriety apply equally to the executive and to the legislative branches?

Chief Justice **Rehnquist**. Certainly.

Mr. **Sawyer**. Thank you, Mr. Chief Justice.

Mr. **Ford**. Thank you very much.

We promised we would try to get through this and have the Chief Justice free before noon. He has a rather important engagement. It looks like we are going to make it, Mr. Chief Justice.

Mr. Kanjorski.

Mr. **Kanjorski**. Thank you very much, Mr. Chairman. Does that mean that my opening statement of 45 minutes should be waived?

Mr. **Ford**. Without objection, your 45-minute statement will be considered as read and printed in the record, and you may proceed to summarize it.

Mr. **Kanjorski**. Mr. Chairman, I could not pass up the opportunity as a lawyer to change roles and have an opportunity to ask questions of the Chief Justice. I think every lawyer in the country would like to have that opportunity and those of us who are members of the bar have a unique opportunity today.

Last night at about 12:30 we closed, Mr. Chief Justice, the markup of the bill on the savings and loan bailout in this country. And one of the last elements we took up was—one of our comembers of this committee, Ms. Oakar, brought comparability of pay scales of federal agencies, particularly the independent agencies. And we have been disturbed because—I do not only perceive this as a political problem in the country. I perceive it also as an educational problem.

Most of the people in my district are not aware of the fact of what a salesman of junk bonds may make, $550 million a year. They are not aware of what a news commentator on one of the national networks will make, several millions of dollars a year or the salaries of entertainers. They are really not aware of the fact that there are a million lawyers in this country and that you occupy the very apex of that career.

I do not think or know of another field, whether it be baseball, communications or any other area where the competition for keenness of mind and competency is so great as your profession and the stature that you have reached in it.

And the thing that embarrasses me most is that you even have to come here to the Congress today to talk about percentages of salaries and that this democracy and its people are not aware of the fact that you are probably paid less than 300,000 of your fellow practitioners in this country. That is astounding.

But I wonder whether or not it is not important for this Congress and the news media that seems to be driving this issue and so many other pieces of issues legislation today that we do not make it a practice to start disclosing salaries. I think it is important that at the Federal Reserve Board, we know their salaries. There are individuals working for that federal agency that make as much as $1 million a year and the people in this country are not aware of that.

And I do not think that that is necessarily wrong. I just think it is important that they know that.

I think it is important that they know what some of the executives of the Federal Asset Disposition Association make in this country. The Federal Deposit Insurance Corporation, what they make in this country. The Federal Home Loan Bank presidents, what they make in this country. What the local presidents and CEOs of corporations, businesses, what the local manager of the local plant make in this country.

And it is only when we have that type of a disclosure and that type of education are they going to appreciate what a real super league player—not in baseball, but in the law—should make in this country.

Mr. CHANDLER. Would the gentleman yield? I think that is a superb statement and when Mr. McCloskey was questioning, it occurred to me and as you were responding— it is well for us to remember and being light about it, but nevertheless making a point. 50 percent of the lawyers in the United States graduated on the bottom half of their class at law school.

Mr. KANJORSKI. Thank you very much.

Well, Mr. Chief Justice, I would just ask you this— and I do applaud you that after 200 years of the Constitution, you do see fit to have to come here, and maybe this reflects how we are growing as a nation, that we truly do have people—although the legal profession holds you in such high esteem and your office in such high esteem—but what is it that you see that we could do immediately to change the educational process and the enlightenment of the average constituent in America?

I do not think that they are selfish. I do not think that they are greedy. I think they want to pay competency such as yours and the President's and the speaker and the leader of our executive and the people responsible for running this government. They want to pay them, but they have no way of making that comparison reasonably.

What can we do in the Congress and what can the news media, maybe, the fourth estate of this nation start to do responsibly to help assist and see if folks like yourself that are highly competent do get a highly satisfactory salary.

Chief Justice REHNQUIST. I wish I had a good answer for you, Mr. Kanjorski. Maybe publicizing what people in various walks of life make would help.

I think certainly the celebrities now, at least the sports celebrities, get great publicity as to exactly what they are going to make, probably through their agents who are eager to make it known that they got such a good deal for their client.

When you get down to some of the other officials you are talking about, it is largely, at least to one like me, it is pretty much terra incognita, and if I do not know it—I mean, I do read the newspaper and that sort of thing—I suspect there are an awful lot of people in the rest of the country who do not know it.

I suppose each of us tends to live in a world very much limited by your own perspective. It is human nature. You know what you make. You know what the guy next to you at work makes. You know what people in your neighborhood make and you know what Oreal Hershiser makes. But in between—in between you do not know much about it.

But perhaps something like that would be useful because, believe me, I have racked my brain when I saw the Quadrennial Salary Commission report and when I thought about how to get this over to the American people, the formal arguments which, you know, satisfy me, and I hope that they satisfy most of you obviously do not satisfy a lot of the American people.

I just wish I knew something more than I do about that subject.

Mr. **Kanjorski**. Thank you very much. Thank you, Mr. Chairman.

Mr. **Ford**. I would like to close this hearing now but observe in answer to your last question, the question that I am sure you have heard—usually it comes from a high-schooler, and it goes like this.

When you have to vote on something important, do you vote the way the people in your district want you to vote or do you vote the way you want to vote? And that opens the door to explain a very basic, fundamental thing that is being lost in all the politics of media today, that this is a representative democracy, not an anarchy. In an anarchy the loudest and the noisiest prevail. In a representative democracy, somebody accepts the responsibility to make value judgments and act on behalf of those that are represented using their experience, their education, their bias, and such knowledge as they have of what their constituents want. It is really a question that has always bothered me because never in all my time here have I ever been satisfied on any vote on any issue that everybody in my district thought it was the right thing to do. If it had any importance, it was guaranteed that there was going to be opposition to it from somebody. Clearly, it is rare, if not impossible, for a judge ever to satisfy everybody involved in a matter that a judge has to make decisions on.

That is the thing that the public does not understand. You are asking for a very special kind of judgment to be exercised on behalf of the people, not for the judge to do what is comfortable, or popular, to do what in his or her professional capacity is right. I do not think the public expects any less of politicians.

My own experience is that I have taken very little in the way of positive lumps for supporting pay increases over a number of years on this committee. I expect I will be challenged on that and the very fact that I say it with the press here guarantees that it will increase my mail.

I got the tea bags and all the rest of it. I should state for the press that it was unfortunate that in encouraging people to send us tea bags, it created a lot of waste. It is regretted that we could not save them and arrange with one of the homeless shelters to provide a hot cup of tea to the homeless, courtesy of all of those angry citizens out there. There could have been some homeless people who could go in on a cold morning this winter in Washington and get a cup of tea, but the bags were not packaged to prevent contamination.

Mr. Chief Justice, I cannot express adequately the way our committee feels and the obligation we feel to you for your extraordinary effort put forth to make the burden that we have to bear that much easier. You give us credibility, sir, in a way that scarcely anybody else could do, and for that whatever product comes from this committee will owe a great deal to you and your personal initiative.

I have to announce that the hearings will continue on Wednesday, May the 10th, at 10:00, when we will hear testimony from representatives of both the Article 3 judges and administrative law judges, as well as the Federal Bar Council.

Mr. Gilman has a closing comment.

Mr. **Gilman**. I just wanted to comment that we thank the Chief Justice for his candid and frank opinions, his thoughtful analysis, and his leadership role in coming here on behalf of the judiciary. We thank you, Mr. Chief Justice.

Chief Justice **Rehnquist**. It has been an honor.

[Whereupon, at 11:53 a.m., the committee recessed, to reconvene at 10:00 a.m., Wednesday, May 10, 1989.]

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

WEDNESDAY MAY 10, 1989

House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC.

The committee met, pursuant to notice, at 10:14 a.m., in room 311, Cannon House Office Building, Hon. William D. Ford, presiding.

Mr. Ford. We will begin the hearing now.

The ranking Republican is on his way. He was at the White House this morning, and apparently has been delayed a little bit. I hope he is successful in whatever he is trying to do, and I hope that it is getting support for this committee.

We are continuing our hearings on the report of the National Commission on the Public Service, commonly known as the Volcker Commission report.

Last week we had the very distinct pleasure of having the testimony of the Chief Justice of the Supreme Court of the United States who made, in my view, an eloquent case for the need to begin a restoration of the purchasing power of Federal judicial salaries which, like others in the government, have not kept pace with inflation particularly in the last 20 years.

Today's testimony will be a further exploration and airing of what is referred to as the "quiet crisis", which is rapidly developing in the Federal judiciary because of the compensation problem.

All of us on this committee are aware of the unfortunate perception by the American people that lumps all public employees into a single category of the undeserving, faceless bureaucrat. It is this committee's task to change that perception, to raise in the public's eye the spector of public employees as they really are: dedicated, competent, caring, efficient and above all, essential. No matter what service is being performed, each employee, from the file clerk, to the project manager, to the agency head, is necessary to accomplish the mission undertaken in the public's behalf.

As Chairman of the committee responsible for the maintenance of the Federal service, I am committed to doing whatever is necessary to alleviate the pressures that not only are forcing the best and the brightest of our Federal work force to seek greater recompense and career satisfaction in the private sector, but just as seriously, the problems of compensation are deterring the best and the brightest of a new generation of job seekers from even contemplating careers in the Federal service at all levels.

We are going to call first the Honorable James Churchill, Chief Judge, U.S. District Court of the Sixth Circuit, Judge Churchill has some travel plan conflicts, and he would like to testify alone so that he can depart. Judge Churchill, if you would come to the table.

I think the committee should know that the judge is one of our fine Federal judges from the State of Michigan, and a former state judge in an area of Michigan just above what we refer to as the thumb area. He has been at this for some time, and has the perspective of service both as a state judge and as a Federal judge within the same state.

Judge, I have observed that the court that I formerly occupied as a justice of the peace, which we changed into a district court in the 1963 constitution, is still occupied by the person who was appointed to take my place when I resigned from that position to do something else. In Wayne County he is one of two judges representing the former township, now a city, with about 70,000. Each of those judges is paid $95,000, while everybody sitting downtown in Detroit on the Federal bench is being paid $89,500. I want you to know I have a lot of friends who are reminding me of those disparaties quite often.

Others on the committee may not have that kind of a glaring comparison staring them in the face, but it kind of surprises me that the reaction to our attempts to raise Federal judicial pay are as strong in a state that pays its own judges more than the Federal judges as it seems to be in other places.

I gather that it is just the word "Federal" that gets in the way because there haven't been great public outcries at adjusting our own state judges pay. As a matter of fact, as you and I discussed this morning, there is presently under way an additional adjustment that will raise the circuit judges even higher.

Do you have a prepared statement?

Mr. **Churchill**. I do and it is quite brief, Mr. Chairman.

Mr. **Ford**. Without objection, that will be placed in the record at this point. You may proceed to add to it, summarize or comment on it in any way that you feel would be most helpful to this record.

Mr. **Churchill**. All right, sir. I have a one and a quarter page brief statement. May I read it?

Mr. **Ford**. You may.

STATEMENT OF HON. JAMES P. CHURCHILL, CHIEF JUDGE, U.S. DISTRICT COURT, SIXTH CIRCUIT

Judge **Churchill**. I wish to thank Chairman Ford and the entire committee for this opportunity. I really have no written submission except this brief statement and some information about my background and experience, which has been submitted.

Although I have no authority to speak for others, I am confident that my views are shared by most of my colleagues throughout the United States.

I cannot adequately describe my euphoria when I was first elected as a state trial judge and then 10 years later was selected as the U.S. district judge. Upon my appointment, I made a lifetime commitment to service as a Federal judge. I have never regretted that commitment and it remains intact.

It was not made without cost, however. I burned all other professional and economic bridges. The economic bridge that I burned involved a package of benefits as a state judge. Other Federal judges burned bridges also. In my district, several judges were state judges. One was a Congressman. One was dean of a law school. Some were partners in large law firms. Each of us made his or her own commitment willingly, trusting the system to work.

My expectation of fulfillment of the constitutional guarantee of undiminished real income during good behavior constitutes my life savings. The benefits of the Judicial Survivors Annuity supplement by life insurance, which are each tied directly to salary, provides me assurance that my wife will be secure if she survives me.

Perhaps it is unrealistic, but I do believe that Congress should and will find a politically acceptable way to provide Federal judges with fair compensation consistent with our commitment and the Constitution.

Lifetime appointments to the bench involve risk to the public, but the care built into the selection process has produced good judges drawn from a cross section of the country's best lawyers. The offer of economic security to appointees is a factor that makes it possible for otherwise successful lawyers to compete for appointments.

One of the cornerstones of the Federal judicial system is the economic independence of its judges. It is critical to the system that the cornerstone be maintained in place.

I would be happy to answer any questions, but that pretty much summarizes my view of the issue, Mr. Chairman.

Mr. FORD. Judge Churchill, one of the things that we most frequently hear from the great advisors of public opinion, the radio talk hosts, now is: "you knew what the job paid when you took it. What's the difference now?"

Judge CHURCHILL. Would you repeat your question, Mr. Chairman?

Mr. FORD. Most frequently it is said about all of these Federal positions that we have discussed that the person who is incumbent in that office knew what the compensation was when they took the job. Why are they complaining now?

Judge CHURCHILL. Well, that is true with Federal judges. We knew that the compensation would be undiminished because the Constitution says so, but it hasn't occurred. We knew what the dollar salary was. We could anticipate inflation, but we couldn't anticipate the impact of inflation.

I'm not complaining about what the salary would be if it would just maintain an equality with inflation. That's really all any of us are asking.

Mr. FORD. Clearly the spirit of the constitutional prohibition against reducing Federal judges' compensation during their term of service is violated not by action but by inaction of the Congress and successive presidents in not being able to keep compensation current with the erosion that occurs as a natural process from inflation.

Judge CHURCHILL. That's my view, sir.

Mr. FORD. The President's Pay Commission estimated that the compensation of these offices since 1969, or in the last 20 years, has been reduced in excess of 30 percent. In some parts of the country it is even worse than in others, but that is taking the national average and the national statistical base.

We all know that if we had adjusted the compensation of judges with the average adjustment that took place in the private sector with just hourly workers, not the million dollar executives, according to my reading of the report of the President's Commission, judges' compensation would not have been so seriously eroded.

There is no question in anybody's mind that if the Congress for whatever reason decided deliberately to take action to deny Judges salary adjustments, we would be stopped very quickly by the Constitution. It didn't all happen in one Congress, but over the last 20 years, by inaction, if you will, we have allowed to happen what, if it had happened as a result of deliberate action, would be clearly unconstitutional.

You are talking as the judge in charge of that circuit with the people who are at the trial court level of the Federal bench all the time. In a word, would you characterize for us what the reaction was when the Congress took the frantic action or reaction that it took in January to turn down the presidential commission recommendation with judicial pay at the same time that they turned down the recommendation with respect to the executive branch and the Congress itself?

Judge CHURCHILL. Well, it was despair, Mr. Chairman. I think different ones of us reacted differently. Perhaps some of us have different views of what might occur than others. But the ones that it hit the hardest are some of the—well, different judges have different financial problems. And a few of the younger judges that just came on the bench, at really some financial sacrifice to even come on to the bench, reacted almost in total shock. Some of the others of us who have been judges for quite a long time and were in our 13th or 14th or 15th year as senior judges are perhaps a little more patient.

As I stated in my statement, I trust the system. I trust the Congress. I think when Congress has had to deal with hard problems in the past, it has reacted to it. And I believe the problem will be solved, not easily, but I think it will be solved. Some of my colleagues have less confidence. We are individuals. We don't all react exactly the same. Some of them are pretty bitter. I wasn't, but some are.

Mr. FORD. I'm trying to think of how to phrase this because it's a delicate question for you in your position as the Chief Judge, but let's make it hypothetical if we can.

Is it likely that as vacancies occur in our state in our circuit, that people can be drawn from the kind of backgrounds that you described as the backgrounds of the people who were Federal judges and becoming Federal judges at the time that you went on the bench? Could we today compete for those people?

Judge CHURCHILL. I think yes because I think most of us and others coming on still have confidence that the system will work. In other words, we haven't given up, Mr. Chairman. And if I were in a position of wanting to become a Federal judge, I wouldn't turn the job down if I wanted to be a Federal judge because I think the system will work yet. If I thought that there were some kind of ceiling on pay and that it wasn't going to work, that would be another story.

If you get the opportunity to be a Federal judge, you don't take it, if you are the kind of the person you should be, because of the pay. It is the pay that makes it possible for you to take it. It's other things that make you want to be a Federal judge, not the pay.

I think today there will be good people still seeking the position, but that does not mean they seek the position notwithstanding economic security. They still believe that the Congress will find a way to do what is right. So, the harm is not yet that real, but in time it could be.

I hope that answers the question because I don't want to paint a picture of doom. We have a vacancy in Detroit right now. I assume some good people are competing for it, but they are competing for it in trust. I don't know what else I can say, Mr. Chairman.

Mr. FORD. Well, I'll have to ask Bill Broomfield about that because he is the man now.

Thank you very much.

Mr. McCloskey.

Mr. MCCLOSKEY. No questions.

Mr. FORD. Mr. Sawyer.

Mr. SAWYER. No questions.

Mr. FORD. Thank you, Judge, for your appearance. I appreciate the difficulty you had working this into your schedule. I hope that you will catch that plane.

Judge CHURCHILL. I appreciate being called. I am going to stick around a few minutes because I want to hear some of my colleagues, but then I'm going to take off to get to the airport.

Thank you.

Mr. FORD. The next witness we have is an old friend of this committee, the Honorable Frank Coffin, U.S. Circuit Judge and Chairman of the Judicial Conference Committee on the Judicial Branch.

Judge COFFIN. Thank you, Mr. Chairman.

Mr. FORD. Judge Coffin, it is a pleasure to welcome you to this committee again. We have worked together with mixed success. I think we are batting about 500 or maybe not, if you look at the size of the one that got turned down as against the size of the pay increase that we succeeded in getting a few years ago.

You may proceed to add to, supplement or comment upon your written testimony.

STATEMENT OF HON. FRANK M. COFFIN, U.S. CIRCUIT JUDGE, AND CHAIRMAN, JUDICIAL CONFERENCE COMMITTEE ON THE JUDICIAL BRANCH

Judge COFFIN. Thank you, Mr. Chairman.

I think we have certainly tried out our muscles and our brains on this issue for a long time. And I join Judge Churchill in saying that perhaps now the time has come when our trust will be realized and somehow during the next few months, we shall see a satisfactory resolution to something which is most critical for the judiciary and for the other two branches as well.

This committee has been such a sensitive and staunch supporter of the necessity to obtain and keep good people in government that I feel I am preaching to the converted. Therefore, I can't give you motivation. I can't even give you basic information. What I will try to do today is to give you an update on what I have sensed from my position as Chairman of the Judicial Branch Committee, the condition within the judiciary and, to some extent, the condition in the other two branches.

Now, the first thing I want to address is a matter of semantics. I suspect that you and we have been handicapped in the arena of public opinion when we talk about a pay raise. You and we know—from your questioning of Judge Churchill, it was obvious—that the issue is not a pay raise, but a restoration of the loss of income that all three branches have suffered since 1969.

In my statement, I have attached appendix A, a one-page computation of the amount of money that all of us have lost through inflation since 1969. And without interest that is about $510,000. With interest compounded at 5 percent, the figure rises to $800,000. And I won't even tell you at the moment what the figure is if we compounded it at 10 percent because it is embarrassing, but it does underscore the point that you were eliciting from Chief Judge Churchill; namely, that inflation has done indirectly what Congress could never do directly under the Constitution.

So, we are talking about pay restoration and a partial one at that at the moment because even if the President's suggestion of a 25 percent increase were adopted, Federal judges would still receive about $18,700 less in present dollars than they would if the 1969 real income level had been maintained.

A second point I want to make very briefly is that although that I speak and others today speak just for Federal judges, we realize the needs in all three branches. I can speak with some sympathy having been a member of all three branches, having served in the executive branch as Deputy Administrator of the AID Agency, and having been in this body in the 85th and 86th Congresses.

And we recognize that top civil servants run vast areas of our society and our government, vast areas at a pay level that a middle level assistant manager of small company might earn. No wonder we are seeing the quick rotation of senior executives.

And as far as you in Congress are concerned, it costs as much to educate your children as it does ours and the executive branch, and it costs more to house you with your dual housing obligations.

A third thing I want to say is that a time of deficit is, indeed, upon us. But a fact that has been obscured in the past is that just before President Bush took office, your congressional watchdog, the General Accounting Office, came out with two significant transition reports. One was that this is a time of deficit, and the deficit has to be slashed. But the other was just as important in their mind. They said there was a people problem. They said the government's ability to acquire and retain good people is diminishing. "Unfortunately, the Federal Government's pay structure has broken down." So, the two reports at the same time indicate that the problem you are dealing with today is something that cannot be postponed, should not be postponed.

Even when we were talking about President Reagan's recommendation of a 50-percent increase, you have such a deficit watcher as Jim Miller, former director of the Office of Management and Budget saying that this is something we can afford quite easily. And he testified before the Quadrennial Commission that the total cost would be perhaps something over $300 million. And at that time we used to think the direct and indirect costs of that full 50-percent raise for all three branches would not have been more than $400 million or $500 million, perhaps the cost of one Stealth bomber. But the Stealth bomber's cost is going up and we are going down in what is requested. So, cost is no longer any excuse.

Now, I want to give you my impressions of the present psychology among judges. Last fall, when we testified before the Quadrennial Commission, we submitted answers of 690 Federal judges to a survey, and I include as appendix B in the material I gave you, Mr. Chairman, a summary of 34 judges' responses. That is a pretty good percentage.

And that appendix is worth dipping into because it shows the very real problems that judges have been facing. As Chief Judge Churchill said, they don't complain about the nominal pay they got when they became a judge, but the erosion that has happened since has caused them to reduce their standard of living, to increase their debt, to draw savings, sell assets. It has induced their spouses to work and has induced themselves to seek jobs teaching at night.

We conducted exit interviews of 26 judges who had left in the past 10 years, and 10 of them clearly identified the pay level, as it had become, as a motivating reason.

As for the future, we are cognizant that a third of the judges recently appointed have been under the age of 45. We anticipate that they will be looking for other alternatives.

If I can breach a confidence—and I don't think he'll mind—Chief Judge Churchill said please don't overemphasize resignations because people like me, he said, who are close to the time when they are eligible to take senior status, wouldn't resign or retire even if the pay were reduced to zero because he has so much invested in the retirement system, and he is close to taking senior status. I took it in February. And we are locked into the system. But I'm talking about perhaps the great majority of judges that have been appointed in recent years who are at a much younger age, and they are not going to stay.

I have tried to give you in my statement a circuit reaction from the circuit executives of all the circuits. It is impressionistic. It's anecdotal, but in almost every circuit, you will read of district judges who have made a decision to look elsewhere. In Texas you will read of five judges who are actively looking. In Colorado one judge has made a public announcement that he is forced to get out having raised six children and drawn down all of the money that he accumulated earlier.

I would say that this circuit survey reveals from 18 to 20 judges who are currently actively looking for other work with 5 more who are considering it. And this, Mr. Chairman, is despite the urging of the Chief Justice and the Judicial Conference Executive Committee and all of us, in the words of Chief Judge Churchill, to hold our fire, to keep alive our trust in the hope that something would happen.

I want to conclude by saying that the threat is not that we shall not have people who are interested in being judges, but we shall not have them from across the whole spectrum of society. We may have the poor. We may have the very rich. We may have the ideologue. We may have the idealistic person. And bless that person. We wish there were more, but we cannot expect to find them to supply all of our needs.

In the present pay levels, we are missing attracting women because women lawyers who have reached the upper levels in the legal profession are unfortunately not so many as we hope they will be, but those women who are the natural candidates for a judicial appointment are making far more, several times more, than a judge is paid and cannot afford to give that up and become a judge.

Minorities. Joe Rodriguez, one of our great Federal district judges and of Hispanic origin, said that at the present pay levels, a Federal judgeship is almost off limits for minority communities.

And we are not going to get middle Americans who have families to educate who are doing very well in the practice of law.

What we are getting are younger judges, I fear, who are in it for the short haul, 5 or 6 years, who then will resign, and will be a judge in name for the rest of their lives and will triple or quadruple their salary.

And the other kind of judge we are going to get—and I don't want to be pejorative because we are getting good service from them, but this is the double-dipper, that is, the distinguished State judge who has served long enough to have a State pension. Keeping that, he or she can then come on the Federal bench and not be hurt too much. And that is fine, but what do they have to give us? They have maybe 5 years of good judicial service, with luck, longer. But what we need for a healthy, independent, quality judiciary are people who can come on much younger and spend a lifetime giving us their all for that position.

That concludes what I want to say, Mr. Chairman. I appreciate the opportunity.

[The prepared statement of Judge Coffin follows:]

Testimony of U.S. Circuit Judge Frank M. Coffin
before the Committee on Post Office and Civil Service
of the House of Representatives
William D. Ford, Chairman
Washington, DC
May 10, 1989

Mr. Chairman. I deeply appreciate the opportunity, along with my colleagues, to be heard in this distinguished forum.

If there is one idea that could alone survive from everything else that I say, it is this: the action we request is not that we be awarded a pay increase but that the Congress and the President take action toward lessening the annual amount of real loss of compensation that we, you, and the executive branch have sustained over the past two decades. The President's request for a 25 percent increase, if enacted into law, would give district judges no more than the real pay they would have received in 1978 if salaries had been regularly adjusted for inflation at the rate of civil service pensions. They would still be receiving $18,730 less than their 1969 salary in 1989 dollars. So what we are talking about -- for all three branches -- is not a pay increase, but a partial pay restoration.

To document the extent of loss in real compensation, I attach to my statement Appendix A showing the inroads on salary, simple and compounded, made each year since 1969 by failures to keep up with a typical index, that used for civil service pensions.

I. Today's Federal Judiciary: The Present Setting

Today's hearings concerning the judiciary reflect the fact that the institutions of our government are always targets for not only constructive study, as is the case with this Committee, but also, unfortunately, for skepticism, derision, and cynical disrespect. Both you and we have felt the lash of a vocal public that was the more virulent as it was the more uninformed. This has always been the paradox of our democracy: citizens rely on the wisdom and courage of our lawmakers and public officials to make the critical decisions of the times while they simultaneously denigrate their character, competence, and worth.

Having been one of you, and indeed having been once a member of the executive branch, I am deeply troubled by this anomaly. In appearing here to explain the needs and concerns of the judiciary, I also want to make it clear that we are not blind to the pressures and problems under which you labor and live. Our efforts are not inconsistent with yours. In trying to strengthen the effectiveness of our respective branches, we seek to serve the best interests of the nation.

I now turn to the setting in which the Judiciary finds itself. It is one where judges are doing more work and more complex work than ever before, while being subjected to ever increasing restraints and pressures on the one hand and steadily diminishing compensation on the other.

Here is a brief panoramic snapshot of that foreboding landscape.

-- First, the caseload is up for circuit judges, district judges, magistrates, and bankruptcy judges. Since I ascended the bench in 1965, the caseload per appellate judge has more than tripled. That for a trial judge has more than doubled. And the complexity has gone out of sight. Questions of standing, class actions, abstention, exhaustion, private causes of action, statutes of limitation, choice of remedy, and attorney's fees, infuse every case. Moreover, there are the deadlines of the Speedy Trial Act and the panoply of procedures required by the new Sentencing Guidelines. The norm for many, many judges is a 60 to 70 hour work week.

-- Second, new legislation is constantly proposed with enormous implications for the judiciary -- creating new causes of action, new burdens for trial judges, new channels of appeal, and sometimes even new courts.

-- Third, the era of administration, bureaucracy and committees in the judiciary is in full flower. It is a rare judge who escapes committee duty for his court, his circuit council or conference, or the Judicial Conference. He or she will frequently spend up to a third of his or her time in making reports, attending meetings, and planning seminars.

-- Fourth, the procedures and forms surrounding judicial discipline burden a judge whether as an accused, as an investigator, or as a decider. You would be amazed to know of the interminable hours invested in the discipline process by so many judges.

-- Fifth, the encroaching and generally admirable sweep of ethical canons and their interpretations has increasingly cabined, confined and monasticized the judiciary. What were normal social relations and intercourse when I came on the bench are now universally sensed as beyond the pale. Isolation and separation are the psychic environment. And I suspect that, if Congress puts a ceiling on income judges realize from teaching and royalties, we shall lose some highly respected teacher and author judges.

-- Sixth, financial reporting is required in increasing detail. After finishing work on the income tax return, a judge must turn to his report of income, assets, and sales and purchases of securities. If he has not accounted for items that have dropped off or been added to the list, he must respond to detailed inquiries from a watchdog committee of other judges.

-- Seventh, the benefits and perquisites available to judges are often found wanting when compared to the private sector. Survivors' benefits are still on the cramped side. Maximum benefits for spouses and children leave much to be desired. Health and life insurance costs and coverage compare unfavorably with those in the private sector. One judge, faced with over $1 million in catastrophic medical expenses, found that his first $50,000 costs were not covered by his federal health insurance. Retirement pensions are not vested until age 65 at the earliest, unlike many private pension plans that provide for vested and portable benefits after as little as five years of service. And judges wince at contributing several thousand dollars year after year to a social security program that they will not in all likelihood ever benefit from.

-- Eighth, cost of living increases, made available automatically to the civil service and other judicial employees, are denied judges -- as happened in both 1988 and 1989, only the last instances of a two decade failure to compensate for the erosion of inflation.

-- Ninth, a new player has come on the scene: the arbitrary budget cut. More than other branches of government, the judiciary is labor intensive. Large sums can be cut only by drastic cuts in services, in ability to handle cases, supervise probationers, and provide counsel; in automation improvements; in providing jury trials.

Although compensation is only one issue, its significance to judges can be wholly understood only by taking cognizance of this background of increasing pressures, duties, demands, and restraints.

II. The Case for Restoration of Compensation

The issues underlying the Presidential compensation recommendations this year go to the very health of our government -- stopping infection by removing the reality and appearance of special interest influence; stopping anemia and malnutrition by making it possible for those with families, who are neither rich nor poor, to serve in all three branches; and stopping the excessive bleeding which occurs when top quality judges and administrators leave prematurely for greener pastures. On November 20, 1988, the General Accounting Office, your governmental watchdog, issued two vital transition reports to President Bush and House and Senate leaders. The first was perhaps expectable; it sounded the alarm for the most strenuous efforts to slash the deficit. The second, perhaps less expected, was that the Congress and the new administration must deal with a federal work force that is too often underpaid, unmotivated and demoralized. The report said: "Concern is mounting that the government's ability to acquire and retain good people is diminishing . . . . [T]he federal government's pay structure has broken down."

In other words, your Congressional watchdog signalled that controlling the deficit and reestablishing a realistic pay structure were both priority tasks.

Insofar as the pay structure of the federal judiciary is concerned, you are dealing with approximately 1,000 active and senior Article III judges. On these do our 260,000,000 people depend for the administration of justice in our federal courts -- a ratio of nearly a third of a million people to one judge. Also vital parts of this system are our 284 bankruptcy judgeships and approximately 290 full-time magistrates.

From this point on, I want to make my testimony a very condensed fact sheet. I have reviewed the submission our Committee on the Judicial Branch made to the Quadrennial Commission, "Simple Fairness," a copy of which has been given to each Member of Congress. I have reviewed the testimony of others before the

Commission and its own excellent report, "Fairness for our Public Servants." I have tried to distill the salient facts.

A. The breach of contract and frustration of expectations

1. While wage earners generally have just about kept up with the cost of living since 1969, judicial pay in real terms has eroded by 30 percent for district and circuit judges and 43 percent for Supreme Court justices.

We pick 1969 as the benchmark year because that was the first year reflecting the fairly successful efforts of the first Quadrennial Salary Commission to implement a realistic pay scale.

2. The 73 percent of all serving federal judges who took a very substantial pay cut on being appointed bargained for that -- but not the subsequent erosion.

3. Although judges who were recently appointed have suffered less pay erosion, on the average they earned $120,000 before being appointed. They took a 40 percent cut on the expectation that in 1984 their pay would be equitably adjusted through the quadrennial process and that the erosion the system had suffered since 1969 would be rectified. But in that year there was no salary recommendation. And two years later, despite a recommendation for a substantial increase by the Commission, the final increase was a meager 10 percent. In 8 years, therefore, when the rest of the legal profession was steadily realizing increasingly

greater compensation, newly appointed judges experienced a period of prolonged frustration of their expectations.

B. The impact of these breaches

1. On judges' standard of living and security: Our 1988 Federal Judges Survey reveals:

- 43-44 percent of judges report a decline in their standard of living;
- 61-63 percent report lowered savings and increased debt;
- One-third report the need for the judge or spouse to work part time;
- Over half have had to sell assets.

I attach, for further details of the impact on judges -- financial, intellectual and emotional -- Appendix B, a copy of 34 of 690 responses of judges to Question 23 of our survey, which asked: "Please provide any other comments you would like to make about your office, your compensation, or your expectation of continued service." The answers reveal acute reactions to their long endured pay erosion -- the selling of homes, going into debt to provide education, accepting a lower standard of living, taking on nighttime teaching, spouses entering the job market, inability to provide proper nursing home care for a family member, despair at inability to accumulate a cushion for emergencies or any estate for spouse and family, a sense of lowered prestige, and a regretful decision that the judge would resign the office or retire as soon as he or she became eligible.

2. On resignations

- More judges resigned between 1969 and 1986 than in the 180 years between 1789 and 1969;
- Between 1958 and 1973, 6 judges resigned; between 1974 and 1988, 57 resigned;
- We conducted exit interviews of 26 judges who resigned in the past 10 years; the level of their compensation was a factor in 20 of these cases;
- Resignations have also hit bankruptcy judges and magistrates. In 10 years over 60 percent of the bankruptcy judiciary has suffered turnover; and between 40 and 55 percent of magistrates have given consideration to resigning or not seeking reappointment because of salary levels.

3. On prospective resignations

Even more ominous than the actual resignations to date is the very real and present prospect of large scale withdrawals from the judiciary of younger judges. In recent years one third of the new appointees have been 45 or younger; with the increasing costs of education, housing, medical care, etc, they now contemplate resigning if substantial relief is not forthcoming.

- Item: A survey by the American Bar Foundation shows 30 percent of judges planning on early resignation; of these 30 percent plan to leave within 5 years. The group most likely to leave are judges between the ages of 53 and 57 with 5 to 8 years of service.

4. On recruitment

The American Bar Foundation reports that 56 percent of state judicial selection commissioners say there are not enough qualified candidates for state judicial posts; a similar difficulty faces federal judicial selection officials. See pages 40-42 of our submission to the Salary Commission, "Simple Fairness" -- statements of former Chief Justice Burger, Attorney Richard Donahue, and former Deputy Attorney General Edward Schmultz. More specifically, testimony before the Quadrennial Commission of representatives of the Hispanic National Bar Association, (Gilbert Paul Carrasco), Ms. Janine Harris of the National Conference of Women's Bar Associations, and Thomas A. Duckenfield of the National Bar Association revealed that:

> Minorities and women are still at the point where relatively few of them have reached a status where they would be considered top flight judicial candidates. And those representatives would be at a level of

compensation where they could not consider a judgeship.

As federal district judge Joseph H. Rodriguez, himself of Hispanic background, puts it: "The judiciary is almost off limits to worthy candidates in minority communities."

C. The source of judges: the legal profession

The task of attracting and keeping top quality judges is conditioned by compensation levels in the legal profession. While judges willingly trade top compensation for the satisfactions of the judicial life, they see no merit in being near the bottom in compensation. As former district judge Gabrielle McDonald, recently resigned, put it: "Why, if we're chosen as the best, are we paid the least?"

Leaving aside the astronomical salary figures commanded by partners in the large urban firms, we merely note the following comparisons.

- Perhaps the most realistic measure: The median income of a partner of 25 years experience in a firm of any size all across the country: $157,479. Even more striking is the figure for average income of lawyers recently released by the American Bar Association -- $117,800, a 41 percent increase in the last five years.
- Average salary of corporate general counsels: $234,902.

- **A seven year associate at** top New York law firms: $169,000.
- 9 month salary for a professor at one of the 25 top law schools: $102,000 - $121,000.

III. Reaction in the Circuits Since Rejection of Pay Proposal

I now want to give you even more up-to-date information than the case which we tried to make earlier. I, therefore, canvassed all our 12 circuit executives in the wake of the actions of Congress on February 7 to see, even though provisionally and informally, what the judicial reactions were. Here is my tentative report. I stress that this is made while chief judges throughout the system are urging a wait-and-see attitude until the atmosphere has cleared. Even so, the picture is the most alarming I have seen in all my 23-plus years on the bench.

In the First Circuit we have at least one district judge with four children in college, now actively pursuing avenues leading back to private practice. He writes, "I love the judiciary and I am a public servant at heart, but now that affection for my work and my desires have to take a back seat to the needs of my family." And, of our small group of a half-dozen circuit judges, at least one is seriously weighing his options.

In the Second Circuit there are at least two district judges considering resignation.

In the Third Circuit, one judge writes regretfully of having to accept offers to teach at two law schools. This, he writes, "takes considerable time primarily at night . . . , is beginning to get somewhat tiresome, but is necessary as a supplement to my income." Another judge, who has felt obliged to teach two nights a week, has become so embittered that he is resolved to resign as soon as he can, rather than continue to serve as a senior judge. He writes, "I have talked to several judges who now insist that they will resign at the age of 65, and we are going to lose a substantial portion of our critical resources -- senior judges who are still at the prime of their talents."

In the Fourth Circuit, a district judge with children to educate intends to accept an offer from a private firm.

In the Fifth Circuit, there are these varied responses. In Texas, five district judges have publicly announced their decision to resign or their serious consideration of resigning; four others are investigating offers; three bankruptcy judges are considering resignation; a candidate for a district judgeship withdrew. A district judge in another district is considering resignation as is a circuit judge; one district judge is taking on a teaching job; a magistrate is seeking permission to undertake extra-judicial employment; one judge is entering the paid lecture circuit. The latter writes with bitterness, "It will no doubt reduce the time I spend in trial . . . . However, since my average workday has been 10-12 hours, a small decrease should not be too noticeable -- and, perhaps, will be more in line with what Congress presently thinks I am worth."

In the Sixth Circuit two district judges, one with under five years of service and the other a ten-year veteran, are considering resignation because of upcoming educational costs.

In the Seventh Circuit, a judge reports having sold all his stock and of taking on evening teaching at two law schools.

In the Tenth Circuit, district judge Jim R. Carrigan, having sacrificed to put six children through college and graduate school, finally decided he had had enough. "I owe it to my family to leave," he said. He also observed, "You are denigrated by being told that you are not worth more than a beginning lawyer."

In the Eleventh Circuit, two top candidates for bankruptcy judgeships withdrew their candidacies after the Congressional rejection. One district judge wrote the President of his liquidating savings to send four children to college, of his spouse's "teaching elementary school and stretching every dollar to the limit." The judge is contemplating resignation.

In the District of Columbia Circuit, one circuit judge has established a "personal timetable" for decision as to resignation.

These, Mr. Chairman, are but the visible peaks of an immense iceberg. Judges are not merely feeling demeaned, but they are looking elsewhere; they are making early retirement or resignation plans; good new candidates are withdrawing or refusing to be considered; younger judges are preparing to play "musical chairs" (as one judge put it) and leave the bench after a "short haul" for a lucrative practice.

Finally, the judiciary faces a new kind of "short haul," not on the part of the young judge, but from the older judge who, because he has already qualified for a state pension, can afford to accept a federal judgeship. This may appeal to some as a judicial Filene's basement -- getting good quality at a marked down price. But the hazard to our judiciary is eloquently put by Judge Louis C. Bechtle of the Eastern District of Pennsylvania:

> The judiciary cannot stand for its future, three and five years of effective judicial service by persons who are in some cases on the verge of burn-out and plainly without the vision and the spark that is needed to allow the federal judiciary to be a vibrant Third Branch and perform imaginatively and competently. All these persons . . . are admittedly, in the main, very good people of high standards, high professional credentials, and are dedicated, loyal Americans. But they have been able to come on because they have developed an economic base somewhere else and for a different principle. That principle got the best years of their lives and they were paid well for it and that allowed them to come here. We must be able to attract judges who will come here in the first instance after they have achieved initial and moderate and outstanding success in the profession. Then they will give the federal judiciary the best that they have, which is what our country needs. I haven't made a study, but I perceive this. A brief study may be in order by the AO. If one hundred judges fall in this category and if they are ten years overdue coming on, it is one thousand judge years that we have already missed and that can never be recaptured.

* * *

A theme frequently voiced when we present our data on judicial resignations and the contemplated premature retirement or resignation of many judges is that there is no lack of judicial candidates waiting in the wings.

It is probably true that there are many very able wealthy lawyers, many very able public interest lawyers, and perhaps some lawyers without family responsibilities or with a spouse contributing substantial income. It is also probable that some state judges who have qualified for a state pension would be interested in a federal judgeship. But so to limit the federal bench would spell the end of the pluralism that has been one of the saving graces of the federal judiciary.

What would have been excised would be highly competent younger middle class, minority and women lawyers with family responsibilities . . . a description that fits a vast part of our society. Perhaps these kinds of candidates would not be entirely excluded. There exists the very real threat that they would accept a judgeship and, after a period of 4 or 5 years resign, to accept a partnership paying several times their judicial rate and to retain the honorable title of "Judge" for the rest of their lives. This would make a federal judgeship a waystation in the career of a successful lawyer.

To settle for a bench of the rich, the poor, the elderly, the ascetic, the ideologue, and the upward mobile transient would in a very basic sense be to scuttle independence, excellence, balance, and stability of the Third Branch.

Appendix A

PAY EROSION OF DISTRICT JUDGES' SALARY:

DISTRICT JUDGES' SALARY COMPARED TO CIVIL SERVICE PENSION

Year	Differences Between District Judge's Salary Adjusted at Rate of Civil Service Pensions	Cumulative Annually Compounded at 10%	Cumulative Annually Compounded at 5%
1970	$ 2,240.00	$ 2,464.00	$ 2,352.00
1971	4,141.00	7,265.50	6,817.65
1972	6,260.00	14,878.05	14,385.42
1973	9,081.00	26,354.96	24,639.75
1974	15,020.00	45,512.46	41,642.74
1975	20,063.00	72,133.01	64,791.03
1976	21,414.00	102,901.71	90,515.52
1977	16,998.00	131,889.68	112,889.20
1978	22,289.00	169,596.55	148,696.02
1979	23,812.00	212,749.41	181,133.42
1980	30,326.00	333,586.00	222,032.39
1981	31,413.00	364,999.11	266,117.66
1982	37,462.00	442,707.22	318,758.64
1983	41,774.00	532,929.34	378,559.27
1984	38,874.00	628,983.67	438,304.93
1985	40,195.00	736,096.54	502,424.93
1986	40,195.00	853,920.69	569,750.93
1987	30,940.00	973,346.76	660,760.02
1988	35,999.00	1,110,280.34	731,596.97
1989	41,019.00	1,266,429.27	811,246.77
	$509,515.00		

Appendix B

Excerpts from Judges' Responses

to

Question 23 of Federal Judges Survey:

"Please provide any other comments you would like to make about your office, your compensation, or your expectation of continued service:"

* * *

005 -- Because I was required by statute to maintain a residence in one of the highest cost of living areas in the country, thus requiring relocation from a moderate cost-of-living area, I will, of necessity, consider resigning in the event of my husband's death.

011 -- Love for the art of judging has kept me at it, but two things now cause me to abandon my original and continued intent to serve "for life": (1) greatly diminished chance to practice that art in the caseload flood; (2) realization that I cannot leave anything to my family but a limited life insurance benefit.

012 -- If any effort had been made by the current administration to deal fairly with judges on compensation matters, I might have wanted to stay on the bench as long as possible. There is such meanness and such grudgery pay adjustments by the President and Congress that I now look forward to the shortest time to qualify for retirement.

013 -- The demographics explain my answers. Unmarried, with no dependents and a good supplemental income from teaching, writing and investments. I'm comfortable. If I had kids to bring up and put through school, I could not afford this job and could make 5-10 times the income with a good deal less work.

028 -- The fact that top law schools teaching salaries are substantially above federal judicial salaries is a sad commentary indeed. My standard of living remains good because my wife is a state district judge who makes almost as much as I do, and our children are grown.

032 -- My children are finally out of college. I no longer need as much income as I did. At the same time, it remains unfair to expect me to continue to serve when through inflation my actual income has been allowed to erode.

042 -- My family expenditures exceed my take home pay by about $1,000 per week and have done so since I have been a Federal Judge. I am now and for several years have been selling assets to pay expenses primarily for the cost of paying for higher education of three children. I feel this is a very unfair sacrifice.

044 -- I am proud to be a judge, and think I have been a good one during these past 15 years. But, I feel betrayed by Congress' failure to protect judges from inflation. My income as a lawyer had been several times the $40,000 paid to judges when I was appointed. I was prepared to make that sacrifice in order to follow a public service career. But I certainly expect to receive, in real dollars, what the job paid when I took it. Instead, my

financial reward for 15 years of public service has been an effective 40% pay cut.

051 -- I have 3 children to put through college. The current level of compensation will make this a very difficult task. I will have two options -- go into debt or get a higher paying job. This will not become a problem for me until 1993. I certainly hope that this compensation problem will be resolved by then. I love this job but I love my family more.

052 -- I cannot understand how a younger person with a one income family with no independent income or assets can afford to be a federal judge.

054 -- Most of my former law clerks earn substantially more than I do and have far better future prospects. We have reached the point where only young or rich attorneys can afford the position. While there are plenty of applicants for judgeships, the best lawyers can't afford the step down in income. Further, the prestige of the office is diminished when the younger attorneys appearing before us command a higher income.

061 -- The judge is not personally hurt that badly because of low compensation. It is a judge's family that previously enjoyed a good standard of living (education, vacations, clothing, cars, etc.) that is devastated. This leads to family strife that results in inferior judicial work . . . . Inadequate compensation will lead to resignation by the best judges, leaving an inferior judiciary.

067 -- The job is great. It is interesting, challenging and offers many advantages. But I work many more hours for much less

pay than I earned as a lawyer. The financial strain -- particularly with college expenses approaching -- is severe.

068 -- Certainly the level of compensation is substantially less than what I could earn in private practice. This problem is alleviated to some extent because my spouse is also employed. For young judges in two career households the worst aspect of the system is the requirement that the judge serve until age 65 before receiving any retirement benefits. When I am 65, I will have 33 years of service as a federal judge. The current system, with life tenure and an opportunity to receive either the salary of the office or the salary at retirement, offers much security. I fear, however, that a desire to do something else before I'm 65 will force me to resign earlier than I would otherwise -- simply to replace that future security through maximum earnings in my most productive years. I might quit at 45, for example, rather than 55.

073 -- I considered I was making a lifetime commitment. Judges who resign and capitalize on their judgeships pollute the entire system. We are making the job less and less attractive to lawyers who have the youth, zeal and willingness to commit to public service.

082 -- I am very proud of my service on the bench, and I am very glad to have done it. I would almost certainly not have undertaken it, however, had I known that the effective compensation would be so severely reduced. I do not wish to retire, but I have incurred obligations in the course of staying on the bench that will probably necessitate my returning to practice to discharge.

085 -- The job of U.S. District Judge is exciting and intellectually stimulating! The compensation is inadequate, however. My wife suffered a stroke a year ago and is in a nursing home. I do not earn enough to properly take care of her.

087 -- It is the best job that any lawyer could want. But the position of the independent, generalist federal district judge is under siege from many sources and directions. Current salary levels demean and denigrate the importance of the office and, simply, will result in less qualified judicial appointments over time, which, in turn, will result in diminished respect for the institution and further restrictions on its authority and independence. A vicious cycle!

114 -- If the salary is not increased substantially, the federal judiciary will become a haven for the very rich and the very mediocre trial lawyer or it will become a position of short duration to put on one's resume.

149 -- We are all very weary and very disgusted with the gross unfairness of our salary level as compared with what we are expected to do in our work. I've been teaching at night for over 12 years to make ends meet and I am very weary about that as well. I am sure my work suffers because of that, as my family has.

164 -- My answers reflect less stringency because my children are grown and my obligations have reached a plateau or are diminishing. Were I in my 40's with children to educate, I do not see how I could get by. I have had no opportunity to accumulate wealth, having been in the public service most of my life.

165 -- I have to admit that I didn't really look into the pay situation. I assumed that the government would provide an adequate salary, given the importance of the job. I was, and remain, absolutely shocked by the disgraceful treatment we receive on pay. If my wife for some reason could not continue to work, I would have to resign. As it is, if I can hang on till retirement, we'll have to sell our home and move to a less expensive part of the country. Thank goodness we have no children to educate. I would definitely have to leave the bench if we did.

174 -- I am also strongly considering resignation at age 65 to work as "counsel" to law firm; this should result in substantial compensation even on part time basis (Approx. $75,000 - $100,000).

177 -- The salary problem is not simply one of numbers. It is the gross disparity (and increasing) between the income of "moderately" successful lawyers in the community and federal judges. While a financial sacrifice is expected, it becomes a bit ridiculous to have federal judges earning about 25 percent or less of middle range partners in established firms. In my community, any lawyer of average competence earns at least $200,000 a year. Successful partners earn well over $500,000 and up to a million. Second year associates earn the same salary as federal judges. This disparity in a society that places substantial weight on material values, breeds a lack of respect for the judiciary. Eventually, there must be a mass exodus from the bench -- especially since the financial burdens of some of the judges in their forties are not yet upon them. (Age 46)

185 -- This year associates will soon make more than U.S. District Judges. All of my former law clerks in practice four years or more earn more than I do. It may be argued that lawyers make too much money. I leave that to the operation of the marketplace.

It is also argued that there is no shortage of judicial candidates. There is also no shortage of players for the NFL as the strike proved. I don't see any teams playing with walk-on's or amateurs because they're cheap, however.

We can staff the federal bench with judges willing to work for less than reasonable compensation. We can do the same with an NFL team. At season's end they will find themselves in the same spot -- dead last! $89,500 is not a small amount of money; $89,500 is a small amount of money for a lawyer we would want to serve as a federal judge.

188 -- I must teach in order to be able to survive. I truly dislike the extra burden, but I have no choice (at least not while my children are in college.)

189 -- The independence of the judiciary and its ability to function at all in some effective way will be jeopardized unless federal judges are fairly compensated. We will lose younger experienced judges to private practice if something is not done. We will find then replacement judges less effective because many will be happy to get a "higher" salary because they cannot do well in private practice.

190 -- The work itself is challenging and I feel it is most suitable to my nature. It is a constant struggle financially. My wife has had to go back to school and is doing all she can in the work world. Without her contribution, I could not keep this job. We have sold our fine home and moved into a smaller one in a less desirable area. I am invited to so many things that I have to turn down and yet feel, even professionally that I should go to but can't without accepting charity from law firms, etc. Judges are being placed in a difficult spot. Finances are a constant concern. I would think that good sense would dictate that it should be otherwise.

192 -- Were it not for my state judicial pension, which is more than half of my federal judicial salary, my financial status would be clearly inadequate.

252 -- It's not just the compensation. It's demeaning to deal with five year lawyers who are better paid and still have to advise them what law is.

253 -- If any crisis, involving my family, occurred that required financial resources (including grandchildren) I would be obliged to resign. I have no cushion and worry a good deal about the unforeseen. That is much more troublesome to me than the decline in living standards which I generally anticipated. Also my continued tenure is totally dependent on my wife working.

260 -- The job of a federal judge is, from a practical point of view, closed to any able lawyer, who is the chief bread-winner in the household and who has not accumulated sufficient wealth to

subsidize his position. No accomplished lawyer in this community -- the sort of lawyer who ought to be on the bench -- would become a federal judge unless he/she is ready to retire from the practice of law.

272 -- The salary and benefit structure are so unfavorable, however, that I will seriously consider leaving and re-entering the practice of law at age 65, the first date I am eligible to seek senior status or retire. . . . There is no survivorship benefit worth speaking about and continued service past the age of retirement would be fiscally irresponsible.

274 -- 1. While the published salary is $89,500, my net take home pay is under $50,000 because perks paid by law firms, such as life and health insurance, must be withheld, along with survivors' benefits, social security (which few judges ever will use), and federal, state and local taxes.

Mr. **Ford**. Thank you very much, Judge Coffin.

I started glancing through appendix B of your testimony, and it looks familiar, because I have received letters from judges.

You have identified the responses by a number. On page 2 of your appendix, 044 reads,

> I am proud to be a judge, and I think have been a good one during these past 15 years. But, I feel betrayed by Congress' failure to protect judges from inflation. My income as a lawyer had been several times the $40,000 paid to judges when I was appointed. I was prepared to make that sacrifice in order to follow a public service career. But I certainly expect to receive, in real dollars, what the job paid when I took it. Instead, my financial reward for 15 years of public service has been an effective 40 percent pay cut.

I wish that that was a unique statement, but I have an awful lot of letters from all over the country saying basically the same thing.

There is another factor. Number 51, the next one, says: "I have three children to put through college." That is the magic combination.

I am sure that no politician in this place talking about family values and the value of the American family, would want sitting in judgment of them and their family judges who did not in their own life project a deep concern for their own families.

A number of the communications I have had from the judges indicate that when they went on the bench they were young. One, a Carter appointee, wrote to me. He came on very young. The age that he was when he became a judge, was the same age I was when I became a Congressman. We forgot that we had children that were going to hit college age, and we wanted to at least do something for them. None of my children were able to go to ivy league schools. I have to confess that but for their own efforts, none of them would have completed college. I wasn't in a position to pay for them, and a judge at the same pay is not going to be in a position.

One might say, well, you should have thought of that sooner. I submit that if I had started a savings plan, it may not have been sufficient. I know this because I was chairman—until recently—for 10 years of the Higher Education Subcommittee of the Education and Labor Committee. I and have written and rewritten all of the student aid programs and have studied more than anybody really wants to about what the economics of college educations are for people at all levels of our economy.

It is very clear that if I had in the idealistic way of my generation gone to an insurance man and said, "I have three children, and I would like to have enough money to put them through at least 4 years of college when they reach college age. I want to start investing in an annuity and put money away every month. How much will it cost me? If I had made every sacrifice in the world to pay into that annuity, what they would have told me when my children were small, I would have discovered by the time my children went to school that the fund that I thought was going to pay for 4 years of college would, indeed, pay for about a year and a half.

For the last decade, the cost of college tuition has risen dramatically. With the same sort of shortsightedness college administrators, from 1970 to 1980, put their hands on the lid on the teakettle and said even though it is boiling, we can keep faculty salaries down and forego repair and replacement of buildings, and not upgrade our laboratories and so on. They kept putting off the inevitable until in the 1980s they couldn't put it off any longer, and one of the places they turned to was tuition.

Particularly in the public college sector, you will see the great experiments of the 1950s and 1960s in reducing the cost for people to go to college has disappeared and been replaced by a cost that accelerates regularly now at a rate greater than the CPI each year.

It is not at all fair to suggest that someone who came on the bench in their late thirties and early forties, and served for 6, 8, or 10 years before they faced the reality of what it really costs to help their children now, could have anticipated the cost explosion.

More importantly, it seems to me that we are talking out of both sides of our mouth if we say that we want people who hold positions of importance to be held up to high standards of American family values, and then punish a person for making a decision that puts their family at risk and make them choose between the welfare of their family and continued public service.

Some of the communications I have strike me, as a lawyer, as particularly grinding. You can tell from the tenor of the letter that this is a person who (A) believes he or she is a good judge and because of that belief wants to be a judge, and (B) is saying, "but I can't stay."

I am not so sure that we would be better off if he or she sacrificed the family to stay on the bench. I don't know whether I want that person to be sitting there with that on his or her mind while I'm arguing with a big New York lawyer out in the sticks of Michigan.

I'm not so sure that when you have got a serious matter, that you want the judge to be sitting there preoccupied wondering about where he or she is going to get the tuition payment for Mary or Joe next semester.

I think that somehow we have got to be able to project to the people that we are not just talking about dollars and cents here, and we are not talking about a significant amount of money that would break the budget. The impact of the pay raise that was up in January would have been less than two one-hundredths of 1 percent of the Federal budget. But the talk shows in every one of our districts made it sound like we could balance the budget if we just keep these "scoundrels" from having a pay increase.

Let me go over one more thing with you. We have the suggestion from the Volcker Commission that we should raise the pay in two steps, 25 percent and another 25 percent, respectively.

We had the President's Commission which recommended a 50 percent raise at this time which would give you the 30-percent catchup and a little bit of insulation until the next time that the Quadrennial Commission had to look at the matter. If that had passed, the likelihood that the adjustment required to keep everybody equal in 4 years from now when this President has to appoint another Quadrennial Commission would have been very slight, and perhaps we would be over the shock, and the public would be better able to understand it.

Then we had the recommendation which I believe the Chief Justice attributed to the judicial council of 30 percent forthwith and some sort of a mechanism for annual adjustments to keep up with inflation.

Of all them, the one that clearly holds everybody in place and does not constitute a raise was the one that the Chief Justice conveyed to us. I believe it was your Judicial conference that he was citing when he testified to that. Is that correct?

Judge COFFIN. He represented the formal action of the Judicial Conference, yes.

Mr. FORD. Now, the 30 percent would be what all economists tell us it takes us to tread water and stay right where we are.

Judge COFFIN. Well, it doesn't restore the full amount that has been lost.

Mr. FORD. No. It depends on how far you go back. If you go back only 20 years, it will probably restore it.

Judge COFFIN. No, I don't think so. It wouldn't restore it because we have lost 30 percent since 1969. But to restore it, it would take a 40- or 45-percent raise or a 50-percent raise—roughly between 45 and 50—to get back there. In other words, it's a 30 percent drop from 1969, but from a low base to get back there, it's a higher percentage of what we are earning now to get back to that.

Mr. FORD. I understand. That's what your appendix A illustrates.

Judge COFFIN. Yes, right.

Mr. FORD. At some point the committee will have to consider what it is going to try to bring to the Congress. We are going to have to look at the rationale for each of these and hopefully do a better job—than was done preceding the January debacle—of having the Members of Congress understand where the numbers come from and why they are there.

I'm attracted to the Judicial Conference's recommendation of 30 percent plus a guaranteed inflation factor not because that meets the niceties of the numbers, but because anybody sitting where I am sitting would be a darned fool if they didn't recognize that this is basically a political question that we are dealing with. You have to start the bidding with something that won't cause the other people to fold before you get a chance to play your cards.

It seems to me at some stage very soon, before we actually prepare legislation, we are going to have to settle into an area of what it is we want to accomplish. And I don't think it is, as other legislative initiatives frequently are, one of these things where you can ask for 50 expecting to settle at 30. I think the one and only chance we have is that whatever comes out of this committee is firmly founded on a strong foundation of fact and circumstances that make sense to the Congress, that makes sense to the American people—not something that is a bargaining chip, you know, we'll bid so much and you bid so much.

Judge COFFIN. I couldn't agree more, Mr. Chairman.

Mr. FORD. Having said that, I wanted to observe that for myself. I was one of the 48 people who ended up in a very lonely position of voting for those pay raises. And as soon as I say this, it will change things I'm sure.

I also was a target of Mr. Nader and others because I was Chairman of this committee. On talk shows they drew as much attention to me as anybody other than the Speaker in the House.

I have to tell you that I have the first citizens to come up to me since I voted for that pay raise in January and say, Bill, I'm disappointed in you. I also have to tell you I have some very interesting letters from people who say we always knew you had courage to do the right thing. I can say that on balance, as to those people who have expressed themselves to me either in writing or in person in a way that indicates that they knew how I voted on the pay raise, more people came forward to tell me I did the right thing than told me I did something wrong. If the pay raise had passed, it would have been a different picture. I understand that.

It is pretty tough, because I'm in my 13th term. When I try to say this to another Member of Congress, they say, well, that's all very fine, but you have been here for so long that nobody can touch you. Well, I hope they don't believe that when they have been here as long as I have, nobody can touch you.

You make an awful lot of unpopular decisions as time goes by. You judges get a reputation for being tough and nasty because people accumulate the sentences that are handed or accumulate the judgments that are given, and the negatives tend to stay with people a lot longer than the positives.

But in any event, we have to be able to convince the representatives of the people and at the same time the people they represent that what we are doing makes sense. You do know that the intention of the committee is to explore all three branches before we bring out specific legislation. We hope to deal with erosion repair. We also hope, in the spirit of the Volcker Commission, to see if it is possible for us to deal with regional disparities in cost of living. We also hope to deal only in the executive branch with pay for special skills.

Who would have thought 20 years ago that we would be looking for lawyers with a specialty in environmental law to enforce the Environmental Protection Act? They tell me that they can't hire one because if you are, indeed, a lawyer out there with a specialty in environmental law, the disparity between what you command in the market and what we can pay you as a lawyer to enforce the environmental protection laws is so great that you would be judged certifiably crazy if you would accept the job in the Federal government.

The Director of the National Institutes of Health sat here and told us that it has been more than 6 years since they were able to hire the last research doctor from a college or university in this country. All of us who have been around higher education and worked with it operated on the proposition that everybody pays for relative skills more than colleges and universities. And presently the gap, we are told, for research doctors, medical doctors, is $90,000 a year up from $30,000 a year 15 years ago.

The result is we do not today have a director of the National Institutes of Health.

And all the members who are making speeches out there on the floor about what we are going to do about AIDS, and drug treatment and rehabilitation; what we are going to do to slow down deaths through heart disease, stroke, and diabetes; what we are going to do with all of the major crippling and killing illnesses in this country, would be shocked beyond belief if they saw that we have a National Institutes of Health that can't compete with the lowest paying medical research university in the country for their people.

They would be even further shocked if they found that in some areas of great urgency, the National Institutes of Health actually contracts with the university to have the person who formerly was with the National Institutes of Health come back and complete the project that they have years of research invested in. The person who leaves them goes to the university and gets a very substantial pay increase. Then they contract with the university and pay twice what that person's salary is to the university. It is a good deal for the university. They make an overhead markup on that person. But we end up with our own person back. These extraordinary measures are taken in order not to lose the years of accumulated gains, if gains they indeed be, on major research on major illnesses.

We had sitting where you are sitting the top five people of NASA before the shuttle that landed yesterday went up. All five of them were sitting there in the position of people who had submitted their resignations and were on the way out the door.

We were told that because of the new ethics requirement, for example, that they just awarded recently a $1 billion contract for procurement. The director, because he was leaving, did not want to be contaminated, so he wouldn't sign off it. The deputy director was leaving. He wouldn't sign off. They said they had to go through five people to find someone down the echelon to sign off on that contract. I said privately to the director afterwards, well, who did you get, the building janitor to give that billion dollar award? He said not quite, but almost.

Perhaps we can get our point across if we put these things in a book by talking to one of the spy book writers and saying now here is a great plot for a book: the Russians decide to dismantle this Government by making it impossible for us to do the most important things we are supposed to do. We are cleaning off our bench. We are cleaning out our Congress,and we are cleaning out our executive branch. If you had a skillful writer write it, people would say, no, I have been reading his books for a long time, but this time he has gone too far because it could not happen in America.

But, indeed, it is happening in America. This committee is going to be the answer to the question who should have done something while this was happening.

So, there is a very strong commitment here, Judge, to try to move forward. But this committee is atypical of the House in its understanding of the gravity of the problem. We also may be in some ways atypical of the House in terms of the courage to do what is right—on both sides of the aisle I must say. But they are not atypical of the House in the sense that we are not populated on this committee with people who want to unfurl the flags, bring out the band and march gloriously over the cliff to disaster.

So, whatever is done, will have to be done carefully. You and your colleagues will have to share with us the burden of trying to educate the American people to the importance and the urgency of the business that we are about.

Mr. Sawyer.

Mr. **Sawyer**. Mr. Chairman, I could listen to you forever. [Laughter.]

I don't have any questions.

I am grateful to the witnesses that we have had here today. The comments, particularly those that are accumulated in the back of your testimony, Judge, put the question into the clearest possible perspective. If we want good people, we have to make it possible for good people to serve. We don't have to pay to attract good people. We just have to take it beyond the point where it is infeasible for them to serve. And that's perhaps all we're asking today.

Thank you, Mr. Chairman.

Mr. **Ford**. Thank you.

We are in conflict with a whole lot of activities today. There will be members who wish to submit questions through the Chair. So, we will keep the record open, and we may have additional questions we will submit to you in writing. We would appreciate a prompt response if you feel that you want to respond.

Thank you, Judge.

Now the Honorable Diana Murphy, Federal District Judge and vice president and president-elect of the Federal Judges Association.

STATEMENT OF HON. DIANA E. MURPHY, FEDERAL DISTRICT JUDGE, AND VICE PRESIDENT AND PRESIDENT-ELECT, FEDERAL JUDGES ASSOCIATION

Judge **Murphy**. Good morning.

Chairman Ford and Congressman Sawyer, I want to thank you for giving me an opportunity to speak here on behalf of the Federal Judges Association this morning. I also want to commend you for your courage in taking up a difficult subject that is so important to good government.

The Federal Judges Association is a voluntary organization of over 600 Federal district and circuit judges. It is a grassroots organization, if you will, founded to seek the highest level of justice for the people of the United States and to preserve and protect the ability of the Federal bench to attract the highest quality men and women to serve on it.

During the last several months, I have had occasion to talk with dozens and dozens of Federal judges all around the country, and I wish that I had the eloquence to articulate, to express adequately, their deep sense of concern and frustration.

The courts, of course, are the third branch of government, and traditionally judges have been reluctant to speak up on their own behalf. In this day of media experts and public relations experts, we perhaps are ill-equipped to portray the kind of work that we do and the kind of responsibilities that we exercise, the difficult years of training, the growing caseload, the long hours, the dedication as we seek to render equal justice for all.

In light of the increasing workload and the increasing stress, we have at the same time the loss in compensation that both Judges Coffin and Churchill have already referred to and that Chairman Ford has mentioned.

The considerable loss in compensation that we received in real terms over the last 20 years has been adequately and eloquently documented in the reports of the Quadrennial Commission, of the Volcker Commission and the President's Commission on Ethics Reform. And I won't go over those details here. But these findings and recommendations overwhelmingly demonstrate the need for major salary increases for our Nation's Federal judges.

Ironically, young associates in many large law firms today earn more than Federal district judges.

The consequences of providing inadequate compensation to Federal judges are great. Today fewer qualified men and women are willing to accept appointments to the Federal bench. Many simply cannot afford to take the cut in compensation a Federal judgeship would mean.

While the number of qualified candidates for judicial appointment is declining, resignations of sitting judges are increasing. For example, in the 15 years from 1958 to 1973, only six judges resigned from the Federal bench, but in the last 15 years, there have been 57 resignations.

Many sitting Federal judges have postponed consideration of or final decision on resignation hoping that the Congress——

Mr. FORD. Excuse me for interrupting you. I am trying to remember, but I think former Chief Justice Burger, when talking about the last 15 years, suggested that in his opinion—but he didn't have access at that time to data—there have been as many resignations in the last 15 years as in the previous history of the court. I took it from the judge, and now I'm being challenged. Is it possible that your association could either verify that or correct me so I don't get into more trouble by quoting the Chief Justice?

Judge MURPHY. Well, he did make a statement. I recall it well. And we could certainly give you the exact figures, and I would be glad to furnish those after the hearing.

Mr. FORD. Thank you.

Judge MURPHY. As I was saying, at the present time there are a large number of Federal judges that have postponed consideration of or final decision on resignation hoping that the Congress will enact legislation that will bring about a meaningful financial adjustment. The reality is that without change, many more resignations will occur.

Resignations of Federal judges frustrate our Government's concept of an independent Federal judiciary composed of judges of high quality with life tenure. The judiciary's historic premise of public service is likely to give way to professional pragmatism unless the trend toward resignations is halted. Judge Coffin talked about this—and I believe it is correct—that new judges will assume office at a low salary knowing that after a few years they will be able to resign and enter into the partnership of a prestigious law firm at triple their judicial compensation.

Another quote of the former Chief Justice that I think is a very correct one is that it takes about 5 years for a Federal judge to get up to speed, so to speak, because there are exceedingly complex cases in the criminal and civil area. And so, it is a great cost to the system if you lose judges shortly after that 5-year training period, if you will.

Article III of the Constitution, of course, provides that judges shall receive an undiminished compensation and that has been referred to earlier by Judge Churchill. The Framers of the Constitution considered undiminished compensation an integral component of the concept of judicial independence, and to ensure judicial independence, judicial salaries must be protected against the ravages of inflation.

The Federal Judges Association supports and has always supported a substantial salary increase for Members of Congress and for top officials in the executive branch, as well as for the judiciary. Ideally, judicial, executive and congressional salaries should be comparable. Top officials in each branch need and deserve a raise.

However, if Congress cannot include itself in any salary increase at the present time, we sincerely ask that you approve a substantial salary increase for the men and women who serve on the Federal bench. In all candor, I must tell you that the morale of the Federal judges is at an all-time low. They look to you for your support and leadership.

I thank you for the opportunity, as I said, to speak to you, and I would be happy to answer any questions that you might have.

[The prepared statement of Judge Murphy follows:]

STATEMENT OF
JUDGE DIANA E. MURPHY
PRESIDENT-ELECT
FEDERAL JUDGES ASSOCIATION

The urgent need to correct the erosion of federal judicial salaries has been recognized repeatedly by distinguished panels appointed to analyze this issue. My testimony today, on behalf of the Federal Judges Association,1/ endorses the several bills now in Congress which move to remedy, in part, the existing problem.

Current Federal Judicial Salaries Are Sixty-Eight Percent of 1969 Salaries

FJA members are not seeking a "real-wage" salary increase. Rather, we have advocated a return to the wage scale that existed for federal judges in 1969. Judicial salaries have steadily eroded since 1969. The various legislative proposals to increase judicial salaries represent merely a partial adjustment

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1/ The Federal Judges Association is an independent organization of approximately 600 District and Circuit Court Judges. Membership in the Federal Judges Association is voluntary. The purpose of our organization is to seek the highest quality of justice for the people of the United States and to preserve and protect the ability of the federal judiciary to attract and retain the best qualified men and women for judicial service.

for the effects of inflation. As noted by Senate Majority Leader Mitchell, the federal judges have for many years received no pay increases and became "mired in controversy" merely because of a relatively large "one-time catch-up." 135 Con. Rec. S986 (February 2, 1989).

A thirty percent increase would provide federal judges with a salary which represents eighty-eight percent of their 1969 purchasing power. A twenty-five percent increase would establish a real salary level approximately eighty-five percent of that which existed in 1969. We believe the full increase recommended by the Quadrennial Commission (and by the National Commission on the Public Service) is appropriate. Nevertheless, we endorse current legislation which raises salaries above the current level of sixty-eight percent of 1969 levels. Perhaps just as important, we appreciate the commitment by Congress to address the judicial salary issue which is represented by the legislation. Due to the long inaction on this issue, it may be that a "one-time catch-up" is not feasible, but that corrective action in increments is necessary.

The need for a judicial ~~salary~~ increase has been so extensively documented that further explication would appear superfluous. Nevertheless, a brief recitation of only the recent authoritative conclusions reached by expert panels and the economic imperatives which demand action are described below.

Independent Analyses and the President Recommend Adjustment of Judicial Salaries to Prevent Erosion of Earnings

Every committee or commission which has examined the issue of federal judicial salaries has endorsed a corrective adjustment. As is well known, the most recent Quadrennial Commission report recommended corrective salary increases for federal judges which would "approximate in constant dollars the salaries set for these positions twenty years ago . . . ." Fairness For Our Public Servants, The Report of the 1989 Commission on Executive, Legislative and Judicial Salaries (1988) at 3.

Subsequently, the distinguished National Commission on the Public Service concluded that:

> the President should work with Congress to give high priority to restoring the depleted purchasing power of executive, judicial and legislative salaries by the beginning of a new Congress in 1991, starting with an immediate increase of 25 percent.

LEADERSHIP FOR AMERICA: Rebuilding the Public Service, The Report of the National Commission on the Public Service (1989) at 8 and 53. The Commission recommended that increases be passed as necessary to achieve a return to 1969 salary levels Id. at 37.

Most recently, the President, responding to the concerns expressed by the Chief Justice and the Judicial Conference as well as the National Commission on the Public Service, submitted the "Judicial Salary Act of 1989" for Congressional consideration. The proposed legislation would increase Federal judicial salaries by twenty-five percent.

Failure To Act Encourages Increased Resignations and Hampers Recruitment

The report submitted to the Quadrennial Commission by the Committee on the Judicial Branch of the Judicial Conference of the United States fully documented the need to prevent further erosion in federal judicial salaries. The submission noted that the increase in case load and a decrease in real wages created increasing frustration among the federal judges. Simple Fairness: The Case for Equitable Compensation of the Nation's Federal Judges, Committee on the Judicial Branch of the Judicial Conference of the United States (October 1988).

The frustration felt by the federal judges was reflected in increasing departures from the bench, formerly a rare occurrence. Most resignees left the bench because judicial salaries did not meet the monetary demands experienced by the judges. For example, judges often express the desire to be capable of affording to provide their children with the educational opportunities they enjoyed.

The Quadrennial Commission report highlighted Chief Justice Warren Burger's observation that more judges left the federal bench for economic reasons from 1969 to 1986 "than in all the time from the beginning of the Constitution in 1789 up to 1969." The Commission's report noted an American Bar Foundation Survey that found that ninety-five percent of the responding active judges felt their compensation inappropriate to the workload and professional achievement they have attained. Id. at 29.

The Quadrennial Commission concluded that:

> the loss in real purchasing power of judicial salaries over the past 20 years is threatening to diminish the quality of justice in this country by dissuading the best and the brightest in all sectors of society from service on the federal bench.

Quadrennial Commission report at 27 (emphasis in the original).

The Commission's report and earlier studies merely reflected the inequitable disparity in judicial salaries and the private market. The median income of all partners with 25 years experience in all law firms in the United States is approximately $158,000 per year. Partners with similar experience in moderately large to large law firms in the United States earn more than $250,000 per year. Corporate general counsels on the average earn approximately $235,000. The most pronounced anomaly is the salaries paid to young associates in large law firms. A fifth year associate at a large firm, who formerly clerked for a district judge, probably earns more than the judge for whom he or she clerked. Even in the first year of practice, an associate may earn as much as a federal judge if bonuses as well as housing and moving expenses are considered.

Twenty years ago, the salaries of federal judges were considerably higher than the salaries of state court judges. Today, judges on the New York Court of Appeals earn $5,000 more than the Justices on the Supreme Court of the United States. Judges on New York's trial court of general jurisdiction earn $5,500 more than federal district judges. In the 1988 report of the New York Commission on Legislative, Executive and Judicial

Compensation, the Commission recommended that judges of the New York Court of Appeals be paid $134,537 and that judges of the New York Trial Court of General Jurisdiction be paid $111,139. These salary recommendations, if approved, will widen the gap even further.

The rate of resignations will continue to grow unless judicial compensation is returned to a reasonable level. Resignations of federal judges frustrate the way our government is supposed to work. Our Founding Fathers visualized an independent federal judiciary with judges of high quality and long duration. Failure to reverse the trend of resignations could cause the federal judiciary to be viewed as merely a stepping stone to higher paying jobs. That is, new judges will assume office at a low salary, knowing that after a few years they will be able to resign and enter into the partnership of a prestigious law firm at triple their judicial salary. A significant number of judges are currently holding off serious consideration of resignation in the hope that action will be taken on the salary adjustment issue.

Undiminished compensation was an integral component of the concept of judicial independence to the framers of the Constitution. Article III of the Constitution specifically refers to the salaries of the federal judiciary. It provides that Article III judges shall ". . . receive for their Services, a Compensation, which shall not be diminished during their Continuance in office." The purpose of this provision was made clear in a decision of the United States Supreme Court wherein the Court said that:

> [t]he Compensation Clause has its roots in the longstanding Anglo-American tradition of an independent Judiciary. A Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government. . . . This Court has recognized that the Compensation Clause also services another, related purpose. As well as promoting judicial independence, it ensures a prospective judge that, in abandoning private practice -- more often than not more lucrative than the bench -- the compensation of the new post will not diminish. Beyond doubt, such assurance has served to attract able lawyers to the bench and thereby enhances the quality of justice.

United States v. Will, 449 U.S. 200, 217-18, 220-21 (1980).

The Link Between Judicial Salaries and Congressional Salaries Should Be Dissolved If Necessary

In a second key recommendation relative to the federal judges, the National Commission on Public Service urged that:

> if Congress is unable to act on its own salaries, the Commission recommends that the President make separate recommendations for judges and top level executives and that the Congress promptly act upon them. Needed pay raises for presidential appointments, senior career executives and judges should no longer be dependent on the ability of Congress to raise its own pay.

LEADERSHIP FOR AMERICA: Rebuilding the Public Service, The Report of the National Commission on the Public Service (1989) at 8 and 53. The Federal Judges Association has always supported adjustment of salaries for members of Congress and top-level professionals in the executive branch. The FJA will continue to support such salary increases. Nevertheless, if the political atmosphere does not permit adjustments for members of Congress, we believe action must be taken on the federal judicial salary issue. The President's proposal for a distinct pay raise for the federal judiciary and the other legislative proposals which would "decouple" judicial salaries apparently have acknowledged the equity of such action.

Conclusion

President Bush, in proposing his legislation, provided an excellent summary of the problems created by the inadequate compensation presently paid federal judges. He noted that the:

> [p]resent pay schedules have failed to maintain a rational relationship between private sector compensation and salaries for Federal officials. The failure to enact substantially improved judicial salary rates will imperil the tradition of lifetime judicial service and the ability of the courts of the United States to function as an effective, independent judiciary.
>
> Current salary rates deter sitting judges from continuing in office. Moreover, more and more well-qualified judicial candidates do not aspire to Federal judicial office because of the existing salary structure. Continuation of this trend will dilute the quality of the judiciary and frustrate the congressional purpose of broadening the base of the judiciary . . . .

Press Release of Statement to the Congress of the United States, from George Bush (April 12, 1989).

We ask that the Congress act quickly to pass legislation which would begin to return federal judicial salaries to 1969 levels and which would, to some degree, close the gap between the federal judiciary and the private sector.

Mr. **Ford**. Thank you very much.

On a closer reading of Judge Coffin's prepared statement, we see that he repeated the assertion that from 1789 to 1969 there were fewer judges resigned than in the last 15 years, from 1973 to 1988. It started upward—1958 to 1973, six resignations was unprecedented for that period of time over our entire history, and then between 1974 and 1988, 57 resigned, again an unprecedented number of resignations in the history of the court.

In your testimony you mentioned the impact—no. It is Judge Coffin's statement that mentions the impact also on the startling rate of turnover of bankruptcy judges and magistrates. While people might desire a turnover in the Congress to be very rapid, I don't think they really desire people on the bench to be turning over so we end up with no experienced people or fewer experienced people.

We appreciate the efforts that you have made, and I want you to know that your last comments are a great defense to me from members who are coming up to me now and saying, "you're not thinking of giving the judges a raise without us, are you?" So, I will quote you and say, "No, that's not what the judges want."

But, indeed, it is entirely possible that it will happen if we are able to confront them with some choices. I don't know whether it can be done or not, but we may be able to construct it so that the choice is there to be made, and they will have to decide for themselves whether they want it to be said that because we don't have the courage to change our own pay, we are willing to be dogs in the manger with respect to everybody else.

That is part of the political equation that we are trying to deal with, and it is important that judges keep reassuring our members that they are not in any way trying to get separated from them in consideration of raises.

My own view is that the ancient and hoary tradition around here of keeping the congressional pay linked to the judges is irrelevant today. I do know that the recommendations of both President Reagan's recommendations, as a result of the commission recommendations to him, would have been different had we not insisted on linking the judges. But I don't think that that process is going to work in the foreseeable again anyhow. So, the folklore about it really doesn't mean much anymore.

We should be looking at the realities as we are with the executive branch of what is happening in a highly specialized field of endeavor that the Federal Government is peculiarly responsible for. You are the primary interpreters of the Constitution. I can't think of a better way to celebrate the 200th anniversary of the Constitution than to have the Congress proudly go out and say, well, we upheld the intent of the Founding Fathers that we have a strong and independent Federal judiciary to interpret that document for the American people to protect the rights of the people.

We have people like Connie Morella who is even going back to de Tocqueville to justify what we are doing. I noticed that the other day.

Thank you very much.

Mrs. Morella.

Mrs. **Morella**. Thank you. I am sorry that I was late, Mr. Chairman. We had a markup on a bill in another committee that would enhance the safety of Federal employees.

But I appreciated reading your testimony and hearing you give it and looking at the testimony of those who preceded you.

I wanted to ask you who does the Federal Judges Association encompass, what groups of judges.

Judge **Murphy**. Well, it is, as I said, a voluntary organization, and so any Article III judge is eligible to join. It does require a payment of dues and especially in these times of salary restraints, it is quite remarkable that we have 600 members. So, the majority of the Article III judges do belong to the Federal Judges Association, but it is a voluntary organization. It is not part of the official government structure.

Mrs. **Morella**. So, if it is Article III, it does not have administrative law judges.

Judge **Murphy**. No, it does not. The Federal district judges and circuit court judges compose the membership.

Mrs. **Morella**. Right.

I noticed in your testimony too the very startling figure that you can have judges in the New York court of appeals earning more than Justices on the Supreme Court, which hardly seem to be fair. And, of course, Justice Rehnquist gave us the booklet called Simple Fairness.

You know, in a way you are rather preaching to the preachers. What is the Federal Judges Association doing to acquaint other Members of Congress and the general public of this difficult state that we are in right now? They call it the quiet crisis. It isn't so quiet. Are you doing something to make them realize that the administration of justice is suffering because of this erosion of Federal salaries?

Judge **Murphy**. Well, we are having a national conference that we are sponsoring in the third week of May, and we are going to have a reception to which we are inviting every Member of Congress. And we are hoping that we will have an opportunity on that occasion to talk individually with Members of the House and the Senate and also staff members about our concerns. And they are really mutual concerns because we recognize, as I have already alluded to, the need for pay restoration for Members of Congress and the executive branch.

We also are having some panel discussions on our program at which we will have members of the media and members of the executive branch of Congress, as well as the judiciary, where we are going to talk about some of these issues. That is going to be held at the Mayflower Hotel.

We have also talked with members of the media in our local districts, and we have gotten very fine editorials around the country. All of the ones I have seen have been supportive of pay increase. And we have talked to members in our district.

But as I have said before, I think sometimes what we really need in this day of television and media masters is to get across to the public something that is very complicated. And many people in the country are hurting financially, and it may be hard for them to understand what our particular circumstances are. It's frustrating.

Mrs. **Morella**. You are exactly right, that is the kind of problem that we are facing; Members of Congress who are skeptical that their constituents are going to accept that kind of thing and perhaps somewhat realize the dire situation that we are in, but maybe need a little bit more prompting from the constituents.

I am pleased you have gotten the editorials.

Mr. **Ford**. Will the gentlelady yield at that point?

Mrs. **Morella**. Yes, indeed, Mr. Chairman.

Mr. **Ford**. She is touching on a very good point. Judges are somewhat reticent to express opinions outside of the court identified with their names.

But the Chief Justice when he was here the other day was asked by a member on this side: First, if he thought it was ethical and proper for a Federal judge to write an op ed piece outlining the problem of compensation and the need for it. He said that he saw nothing wrong with that at all.

The other question was what about making a direct contact with Members of Congress that they are acquainted with or who are serving the area where they sit on the bench or where they live, and he saw nothing wrong with that at all.

Will your association make sure that the judges know that the person that I think is the chief arbiter of what is proper for you to do and not proper for you to do has put the Good Housekeeping seal of approval on activities such as that on their part?

Judge **Murphy**. That is exactly what it is because we are under many constraints, and some judges have been concerned. But I don't think we give up our First Amendment rights when we go on the bench, but we need to be careful because our main concern, of course, is trying to render equal justice in the cases that come before us. And so, generally we have refrained from doing this kind of thing. But the situation has come I think where we need to communicate our concerns.

Mrs. **Morella**. And you may even want to talk to some of the columnists to just let them be apprised of it. They may do a column here and there.

The editorials are great. Maybe you need a reiteration of the editorials. I think that is the kind of thing that helps to formulate public opinion which is what will bring this about.

Judge **Murphy**. There was a wonderful article in the Los Angeles Times about one of the judges that Judge Coffin referred to who has decided to leave the bench. He is an outstanding trial judge and was an outstanding trial lawyer. And he has decided that he needs to leave the bench and is considering various offers. And it was an indepth story. It told the details about his family, the second mortgage and so on. And something like that is very helpful because it humanizes the situation as apart from just statistics.

Mrs. **Morella**. That is absolutely true.

There is a person right in my district who was offered the nomination and who had to turn it down because he realized he still had three kids and two still had to go through college. So, it is a very human thing.

I thank you for appearing before us, and I thank you, Mr. Chairman, for continuing with these hearings that we have had that have given us a lot of information.

And I compliment you on remembering that de Tocqueville did say that in our society it is the power and influence of lawyers that is highest. I'm sure he included judges in on that. Thank you.

Mr. **Ford**. One has to presume that some of your colleagues are closer to presidents from time to time than I have been at least as a Democrat for a long time.

The commission of the President has sent us another tome, "To Serve with Honor," a report of the President's Commission on Federal Ethics Law Reform.

The Chief Justice was asked a number of questions that went around the periphery of how many judges are being forced to seek outside income to supplement their salaries.

I am reading from the report of the President's commission which we trust made a thorough study of this. They say at page 34,

> Outside income of judges is not restricted by law. Canon 6 of the Code of Conduct for the United States judges permits judges to receive compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by the Code, to the extent that there is no appearance of impropriety. There is no dollar limit but the compensation must not exceed a reasonable amount nor what a person who is not a judge would receive for the same activity. Judges may speak, write and lecture on legal and non-legal topics as long as their activities do not detract from the dignity of the office or interfere with the performance of their judicial duties, Canon 5.
>
> In addition to these limitations on the income that can be earned from particular kinds of activity, an eclectic set of rules in the statutes set substantive limits on the kind of activities that employees are allowed to undertake.

Then they come up with a recommendation for a statutory prohibition against judges, Members of Congress or top executives accepting honoraria of any kind for making speeches.

So, that suggests two questions. The first is to what extent do you feel—obviously, it is not the kind of thing I would expect you to have statistics on—judges are seeking outside income to supplement their salaries. Second, is that on the increase or is it staying about the same as it has been during your experience?

Judge **Murphy**. The administrative office has gathered some statistics on the number of honoraria judges get during the year, and it is a small proportion of judges who take and receive honoraria, but there are some.

I don't see any sign at the present time that people are seeking more speaking engagements. I think there would be a problem with going to speak to special interest groups in order to supplement your income when you are going to be deciding those cases.

Mr. **Ford**. Well, the Chief Justice made that point, but acknowledged that he himself, both as an Associate Justice and since he has been Chief, had spoken to law schools and bar groups and others and had been compensated for it. But he would not think of talking to a labor union or the chamber of commerce, I think were the examples he used. He would avoid talking to any group that was a representative group that might have issues of importance to advocate or oppose, he said, unless it was as a member of a panel where the other side was being presented and you were involved in a panel type discussion.

Now, the second part of my question goes to this. There is great anxiety out there about honoraria. It is as if it was something that was just invented. Among the university people of this country it has been a time-honored method of supplementing their compensation. It has become more prevalent in the Congress as people feel more pressure to find outside income.

The President's commission is now recommending an absolute ban.

If we are considering a pay raise and an absolute ban on that type of outside income, it seems we are in danger of going one step forward and one step back at the same time. It seem to me that the people who feel themselves compelled to do that now, to supplement their income, would be losing one form of income and perhaps not realizing by the size of the pay raise a replacement for that income they would be losing.

I hope that your folks—and I am not going to ask you off the top of your head to take a position on this—will have a look at what would be the combined impact on your members and how they would react if we suddenly for the first time had this statutory ban in the form of which it is suggested by the commission and, just to pick a figure, and a 25 or 30 percent pay increase.

I wonder if you could look at that and advise us later before we reach the end of this process about how your members react to that combination. If anybody ever bothers to introduce the President's legislation, part of it will come to this committee, and some of it will go to the Judiciary Committee.

Would this portion of it be in this committee or in Judiciary?

Staff thinks it would go to the Judiciary Committee. Well, we can give the benefit of an appearance by the Chairman of this committee to tell them what I think they ought to do with it.

Mrs. **Morella**. Would the Chairman yield?

Mr. **Ford**. Yes.

Mrs. **Morella**. I think that is a very good point that the Chairman raised.

I wonder if you might also include in addition—he alluded to it, but in addition to honoraria, a ban on outside income. In my area, which is, of course, the one I know, we have our judges lining up to teach at the law school, teaching part-time, and I am curious about how the association would react to also banning outside income.

Judge **Murphy**. Well, I have appointed a committee that is looking at that proposed legislation and is going to make some recommendations to us on it.

But I do know from earlier, at the time of the Quadrennial Commission, they asked us for some reaction about banning honoraria and banning law school teaching income. And we seemed to at that time come to an agreement as far as honoraria, that if there were a significant pay increase or a substantial pay increase, that the honoraria wouldn't be a concern.

But it was clear, just from the preliminary discussions we had at that time, that judges differ a lot on the law school aspect of it. Many feel that there is a duty—and I think the Chief Justice referred to that last week when he was here—of teaching that goes along with the judicial office, of being in touch with the training of young lawyers, certainly on a full-time basis. So, we certainly are going to be looking at that. It is an area where I know there is some disagreement.

Mrs. **Morella**. Well, you know, we try to advocate that our lawyers do some pro bono work, and I think that if there were a significant raise, they might want to consider doing that kind of thing on a voluntary basis.

Thank you. Thanks, Mr. Chairman.

Mr. **Ford**. I think it is only fair that the record reflect contemporaneously with this discussion the Quadrennial Commission's comments as they address themselves to honoraria and outside earned income.

> Since the code of conduct for the United States judges restricts most forms of outside earned income for judges, the acceptance of honoraria has remained a relatively minor source of supplemental income for the judiciary. Judges may, however, subject to the proper performance of their judicial duties, speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice. They may likewise speak, teach and write on non-legal subjects as long as those activities do not detract from the dignity of the office or interfere with the performance of judicial duties.
>
> They may accept honoraria, such service up to $2,000 per appearance.

And then they have this figure, and where they got it I don't know.

> In 1987 only 110 of the 907 Federal district and circuit judges reported accepting any honoraria and only 9 of those judges received more than $5,000 for the year.
>
> If Congress allows substantial increases for all branches to take effect while it also abolishes honoraria for its own members, it is appropriate that honoraria be abolished in all three branches. This would leave judges free to receive compensation for continuing activities, such as writing scholarly texts or sustaining law teaching, since such activities are excluded from the definition of honoraria and usually do not conflict with or appear to conflict with their official duties.

It would appear that the Quadrennial Commission felt that while there might be some symbolic effect in abolishing honoraria, as a practical matter it wasn't going to affect the judiciary very substantially. And it looks like the ethics commission of the President is giving us a solution for a problem that doesn't exist that is going to create in the minds of the public the idea that, in fact, there is a problem that exists that has to be solved.

They used to accuse those of us who were called the liberals around here of having more answers than there were problems to be answered. If I have ever seen an example of an answer for a problem that doesn't exist, it's a ban on honoraria for the judges.

But we would like, nevertheless, to have the benefit of the thinking of your people about what the relative value of that is. It can be negative as well as positive. If we take action to ban honoraria, the ordinary person is entitled to believe that we are taking action because there is an important problem we are addressing. And we might for the first time brand the judges with something that, indeed, is not widespread and it's practically nonexistent, if these figures that the Quadrennial Commission had bear any validity to the true facts.

Judge **Murphy**. I would just like to add that most of the judges I know do go out and speak in the community to a wide variety of groups without honoraria on the subject of how the judicial process works to give people some idea about how the court system works. And I believe that is proper for a judge to go to any kind of group and do that type of community education.

Mr. **Ford**. Thank you.

Mr. Gilman.

Mr. **Gilman**. Thank you, Mr. Chairman. Mr. Chairman, I regret that I had to attend another meeting earlier and wasn't able to be here at the beginning of the testimony, and I want to welcome our judges before us. And I appreciate, Mr. Chairman, your continuing this series of hearings so that we can make a proper recommendation with regard to judicial salaries.

I just have one question that I would like to ask that we have asked of a prior panel. As you know, Ralph Nader has been one of the opponents of judicial salaries, and I would like to paraphrase his argument against judicial legislative and executive branch salary increases in saying that financially competitive Federal salaries only reinforce the historical pattern of recruiting candidates for top level government positions from the corporate and moneyed classes. He argues that current salaries are fully adequate if not excessive, and efforts to recruit high level officials should be broadened to include public interest lawyers and other social activists in order to make government more representative of the people.

Would you care to comment on that argument?

Judge **Murphy**. Well, Mr. Nader is a very principled advocate for his point of view and has a well-known abstemious lifestyle.

I think that I respect the concerns that he is verbalizing, but I think that it works the opposite way. In other words, as the salaries diminish, only those lawyers who are independently wealthy or have amassed money from corporate law practice are in a position to serve or those who can't find a good niche somewhere else in the legal community. So, if he wants to get—and I believe that that is his goal—if he wants to have a diverse bench, I think you have to have adequate salaries. And Judge Coffin mentioned the difficulty of attracting women and minorities who now have opportunities in the profession to earn a lot more than they would on the Federal bench.

So, I admire the goals that he is stating, but I think he is coming at it from the wrong factual basis.

Mr. **Gilman**. Thank you, Judge Murphy, and I have no other questions, Mr. Chairman.

Mr. **Ford**. Though it has been asked of a lot of witnesses, that is the most skillful and judicious answer to that question I have heard. [Laughter.]

As you were answering it, it occurred to me that when you say gentleman farmer, everybody knows what you mean. Within my sphere of friends are people who started out in the medical profession or the legal profession and quite wisely, it turns out, stayed away from politics. They start amassing wealth and for want of something better to do, they bought farms and start raising horses and doing other things that give them tax advantages among other things. Real farmers tend to look down their nose a little bit at the gentlemen farmers who don't do it seriously, but do it as an avocation or a hobby.

It occurred to me that we could populate the Congress with gentlemen Congressmen, using the word "gentlemen" in the sense that it is used in gentleman farmers, and the bench with gentlemen judges. I don't think that is what Nader has in mind with his public service advocates at all because our great public service advocates are not people who worry more about the changes in the tax code than any other legislation we write.

It could be logically argued that if you followed his pattern we would get exactly the opposite mix in important public positions that he strives to achieve. I think you have said it a different way but said the same thing. I would rather use your quote than mine because what I have said will tend to raise the hackles of some of my professional friends who are gentlemen farmers.

Thank you very much for your testimony. I look forward to working with you. I hope you will pursue the matters that we raised with you and give us the benefit of your advice.

Judge **Murphy**. I look forward to seeing you again. Thank you.

Mr. **Ford**. Now we will have Mr. Robert MacCrate, immediate past President of the American Bar Association and Mr. Thomas W. Evans, President of the Federal Bar Council. If you would both come forward at the same time.

We will start with Mr. MacCrate. You may summarize, highlight or supplement your statement in any way you feel would be most helpful to this record.

STATEMENT OF ROBERT MacCRATE, IMMEDIATE PAST PRESIDENT, AMERICAN BAR ASSOCIATION ACCOMPANIED BY IRENE EMSELLEM, GOVERNMENTAL AFFAIRS OFFICE, AMERICAN BAR ASSOCIATION

Mr. **MacCrate**. Thank you, Mr. Chairman and members of the committee. My name is Robert MacCrate, and I am a practicing attorney in New York City. I guess, Mr. Chairman, I'm that big city lawyer type that you referred to earlier.

But I am the immediate past president of the American Bar Association, and in that role I have been in all 50 States of the United States and feel a bond with our profession throughout the country.

Now, on behalf of the association, I welcome this opportunity to present our concerns and comments on a serious national problem, the inadequacy of compensation paid to senior government officials. We seek your support for urgently needed and well-deserved increases for Federal officials, but feel a special obligation to address the issue of fair and appropriate compensation for the Federal judiciary.

The ABA is a national voluntary organization of some 350,000 lawyers representing all segments of the legal community.

We believe that inadequate Federal judicial compensation now jeopardizes not only the quality of the Federal judiciary, but the quality of justice itself. Today there is a strong national consensus within the legal profession to this effect.

You have before you the excellent report by the National Commission on the Public Service chaired by Paul Volcker. That report, Leadership for America: Rebuilding the Public Service, reaches the same conclusion with respect to all types of government service as the American Bar Association has found in its examination of the problems in the Federal judiciary.

The Volcker report states:

> Too many of our most talented men and women are leaving the public service and too few of our brightest youth are willing to join. If these trends continue, America will be left with a government of the mediocre. Such a government would be unable to sustain public confidence and be ill-equipped to meet the enormous challenges of the next century.

In urging a forceful response to this erosion in attractiveness of public service at all levels in the Federal service, the report recommends that the depleted purchasing power of executive, judicial and legislative salaries be restored with an immediate increase of 25 percent, followed by an additional raise before the 1991 Congress convenes. The report suggests that if Congress feels unable to act on its own salaries, that the President should make separate recommendations for judges and top-level senior executives and that Congress should act promptly on these recommendations. The American Bar Association strongly concurs in these recommendations of the commission.

Now, the most recent rejection of the Quadrennial Commission's recommendations, coupled with the long history of neglect of the basic needs of Federal judges for fair and just salaries, has reached a point where the effective functioning of the Federal court system is endangered.

As Judge Murphy has alluded, the Framers of our Constitution understood the importance of protecting the independence of the judiciary. Our Constitution provides that Federal judges are appointed for life and that compensation shall not be diminished while in office. It recognizes that the independence of the judiciary is fundamental to consistency and integrity in Federal law.

The issues of judicial independence and judicial compensation are inseparable. Freedom from political and financial pressures are vital to fair and unbiased decision making. The failure to provide reasonable salaries to Federal judges flouts the wisdom of our Constitution. We cannot have a quality judiciary if salaries are not even remotely commensurate with the experience and abilities of those whom we ask to serve on the bench and with the responsibilities of that office.

To evaluate more fully the effect that compensation has on the retention of Federal judges, the ABA commissioned last year a study by the American Bar Foundation, which is the independent research institute affiliated with the association. The results of that survey, which are before the committee, should be of concern to everyone. The link between judicial career satisfaction and dissatisfaction over compensation clearly indicates a looming crisis in the Federal judiciary.

Consider the following: 81 percent of the active judges feel that their salary is not adequate to meet their needs; 95 percent feel that their compensation is not appropriate; 28 percent have changed their original intentions with regard to the duration of their judicial service and now intend to shorten their term of service; and 85 percent of those who plan to leave the bench early indicated that compensation is the most important factor in that decision.

Overwhelmingly, judges responded that their current salaries not only do not meet the demands of their daily living, but the level of compensation is inappropriate for the nature of the work they do and the level of professional achievement that they have attained. Those most likely to leave the bench are judges between the ages of 53 and 57 with five to eight years of experience in the Federal judiciary. The Federal courts would be devastated if such an exodus of experienced jurists were to occur.

Moreover, this American Bar Foundation survey was conducted before the Quadrennial Commission's recommendations were rejected early this year. Now, if the survey were taken today, I have no doubt that the degree of dissatisfaction would be even greater. However, the one factor that has prevented a mass exodus from the judiciary to this time is that over 90 percent of the judges expressed a high degree of satisfaction with the level of professional independence they experience on the bench, their sense of accomplishment and their sense of serving the public good.

We are, indeed, fortunate to have the high quality and dedicated judges who are serving on the Federal bench. However, most of these men and women are making substantial financial sacrifices in order to remain on the bench. At the same time, many who should aspire to the bench are not making themselves available.

Now, a second survey by the American Bar Foundation provides related statistical data—and this is also before the committee—on the importance of compensation in attracting highly qualified candidates to the bench. This survey was directed to the chairs of 92 state merit selection commissions in 35 States and the District of Columbia. Only one state utilizing merit selection panels was not represented among the responses received and tabulated.

The information developed from this survey indicates that 56 percent of the commissioners are dissatisfied with the number of highly qualified candidates available for each vacancy; and 62 percent of the commissioners who have interviewed candidates believe that compensation was the most important factor in dissuading individuals from seeking judicial positions.

When asked if state judicial salary levels are adequate, three-quarters of the commission chairs said no. In response to follow-up questions probing why they felt compensation levels are inadequate, 90 percent said that the levels were a deterrent to attracting highly qualified candidates. Now, although these merit selection panels are involved in selecting candidates for the state judiciary, the information that has been developed certainly reinforces the reports of those involved in the judicial selection process on the Federal level.

During this period of steady and substantial erosion in the real income of Federal judges, their workload has reached staggering proportions. The number of cases filed, terminated and pending in the U.S. court system last year reached the highest levels ever recorded in a statistical year. For fiscal year 1988, the combined total of Federal civil and criminal case filings increased to 284,219. Bankruptcy case filings rose to 594,567, and cases appealed totaled 37,524.

As you know, the judiciary has no capacity to control its ever-expanding workload and there is no evidence to suggest that the steady growth in the judicial workload will abate. New laws are having a dramatic impact on the Federal courts. For example, although no new judicial positions were created under the Anti-Drug

Abuse Act of 1988, this new law has created a mechanism that will generate a tremendous volume of federal criminal prosecutions. Over $500 million in new budget authority for various drug abuse law enforcement agencies and programs are provided as follows: $39 million for hiring up to 300 additional U.S. Attorneys and related support staff; $116 million for the Coast Guard; $30 million for additional Drug Enforcement Administration personnel and equipment; $26.2 million for increased Immigration and Naturalization Service personnel and equipment; $8.5 million for salaries in the Customs Service; $15 million for the FBI's National Drug Strategy; and $7 million for the Bureau of Alcohol, Tobacco and Firearms.

By contrast, the federal courts received $35 million for additional deputy clerks and probation and pretrial services personnel, $15 million for defender services, and $1 million for juror fees to handle the expected crush of drug cases.

The American Bar Association is mindful of the fiscal constraints under which the federal government must operate. But as the foregoing example illustrates, in making the difficult choices of allocating governmental resources, more attention must be paid to the requirements of the judiciary. It is vitally important that we preserve and improve this system.

The judges are the central figures in our justice system. It is vital to the public interest to ensure that federal judges are of the highest caliber, free from the distractions of personal economic pressures, and independent of outside influences.

The continued failure to provide adequate judicial compensation and adequate compensation for all top government officials seriously affects the ability of the government to attract and retain the highest caliber individuals. It undermines the efficient, productive, and effective management of resources and the confidence of the public in our institutions of government.

Substantial increases in Federal judicial compensation are long overdue. It is vitally important that we not miss another opportunity to provide more equitable salaries. We urge the implementation of the Volcker Commission's salary recommendations.

Thank you, Mr. Chairman.

[The two studies referred to follow:]

THE EFFECTS OF COMPENSATION ON THE CAREER SATISFACTION EXPERIENCED BY FEDERAL JUDGES

EXECUTIVE SUMMARY

At the request of the ABA's Standing Committee on Judicial Selection, Compensation and Tenure, the American Bar Foundation conducted a survey of federal judges to assess the effects of compensation on career satisfaction of the federal judiciary. The following is a brief summary of the findings of this study.

* Seventy percent of the federal judges who responded to the survey are dissatisfied with the level of compensation they receive.

* Eighty-one percent of the responding active judges feel that their salary is not adequate to meet their needs.

* Ninety-five percent of the responding active judges feel that their compensation is inappropriate for the nature of work they undertake and the level of professional achievement they have reached.

* Twenty-eight percent of the active judges who responded to the survey report that they will reduce the duration of their originally planned tenure on the federal bench.

* Ninety-two percent of the respondents who indicated that they will shorten their planned tenure report that monetary compensation is an important factor in that decision.

* Judges who have 5 to 8 years' experience in their current judicial position are more likely than those at other experience levels to indicate that they will shorten their planned tenure on the bench.

* Thirty percent of the responding active judges plan to leave the federal bench before retirement; 30 percent of those who plan to leave early will do so in the next 5 years.

* Sixty percent of the federal judges who responded to the survey feel that compensation is an important factor in attracting highly qualified candidates to the federal bench; only 14 percent feel that it is not at all important.

Submitted by

Joanne Martin
American Bar Foundation

October 1988

THE EFFECTS OF COMPENSATION ON THE CAREER SATISFACTION EXPERIENCED BY FEDERAL JUDGES

I. The Survey

The mission of the ABA's Standing Committee on Judicial Selection, Compensation and Tenure is rather concisely embodied in its name. As a way of addressing the issues that fall within its purview, the Committee determined that it would be appropriate to conduct a survey of judges to gather information on their perceptions regarding matters related to judicial selection, compensation, and retention. At the Committee's request, the American Bar Foundation designed and conducted this survey.

A six-page questionnaire, a copy of which follows this report as Appendix A, was designed, pretested, and then sent to all federal circuit and district court judges, all state appellate judges, and to a sample of state trial court judges sitting on courts of general jurisdiction. For the purposes of this paper, which are to examine the perceptions of federal judges about compensation as it relates to career satisfaction and to investigate the possible effects of compensation on selection and tenure, only the data from questionnaires returned by federal judges are discussed.

A total of 557 usable questionnaires were returned by federal judges for an overall response rate of 57 percent. Sixty-three percent of the active judges responded, as did 43 percent of the judges currently on senior status. Sixty-two percent of the active circuit judges returned a completed questionnaire and 63 percent of the regular district court judges did so. A discussion of the confidence level appropriate for this response rate and for other statistical terms used in this report can be found in Appendix B. As not all of the respondents answered every question in the survey, when the findings are presented, the size of the respondent base upon which percentages for each question were calculated is identified.

II. Career Satisfaction

In the past several years, the media have documented the important role compensation has played in the decisions of individual judges to leave the federal bench. To more fully evaluate the effect that compensation has on the retention of federal judges, a threshold inquiry is needed to address the importance of a number of different factors in judges' satisfaction with their current position on the bench. In light of ongoing concerns about the links between judicial career dissatisfaction and caseload volume, independence, and prestige, we included these factors along with several others, including compensation, to assess not only the level of satisfaction individual judges experienced with each, but also to produce an evaluation of the relative importance these factors have when compared to one another.

The judges were asked to evaluate, on a five-point scale ranging from "very satisfied" to "very dissatisfied," the level of satisfaction they experienced with regard to various factors within the context of their current position. Table 1 presents these evaluations. It shows that 78 percent of the responding judges express a high degree of satisfaction with the levels of professional independence they experience on the bench, and over half indicate that they are very satisfied with the sense of accomplishment and the sense of serving the public good they achieve.

Table 1

Satisfaction With Various Elements of Judicial Service*

Factors	Level of Satisfaction					(Ns)
	Very Satisfied 1	2	3	4	Very Dissatisfied 5	
Professional independence	78%	19%	3%	1%	0%	(514)
Workload	18	23	28	18	12	(504)
Peer support (workload related)	24	35	28	11	2	(486)
Peer support (collegiality)	32	32	22	10	3	(502)
Community prestige	39	35	19	6	2	(496)
Monetary compensation	3	7	19	25	45	(502)
Sense of accomplishment	56	35	7	1	1	(511)
Sense of serving the public good	65	28	5	2	1	(500)

*Percentages may not add to 100 due to rounding.

On the other end of the scale, however, we also see from this table that compensation is the factor which produces the highest level of dissatisfaction. Forty-five percent of the responding judges indicate that they are very dissatisfied with the level of monetary compensation they receive. Assuming the middle column--a rating of "3" on the five point scale--to be neutral, we can say that 70 percent of those federal judges who rated their level of satisfaction/dissatisfaction with monetary compensation report that they are at least somewhat dissatisfied with their judicial salary. Of the eight factors evaluated, compensation was the only one which received more dissatisfied than satisfied responses--at a ratio of 70 percent to 10 percent.

Before pursuing the effects such a high level of dissatisfaction with compensation might have, these numbers should be examined more closely to see whether other factors such as status (senior status or active judges) or level of court might be playing a role. While there were some differences when the federal judges were analyzed by status and by court, compensation is consistently the factor most frequently identified as very dissatisfying by each group.

One might expect that senior status judges would be less inclined to be dissatisfied with salary. They have chosen to extend their service beyond retirement and the demands on their income will be lower than those for younger judges with children to support and educate. Indeed, senior status judges were less likely overall to express dissatisfaction with their salary. Only 27 percent of these judges say that they are very dissatisfied with the level of monetary compensation afforded them by their judicial position. However, 49 percent of the active judges express this strong level of dissatisfaction. (It should be noted that 57 percent of the senior judges express some dissatisfaction with their salary, while only 19 percent say that they are at least somewhat satisfied with their monetary compensation.)

There was only a very slight difference between judges on the two different levels of federal court in terms of their evaluations. Forty-three percent of all responding circuit court judges assessed their current level of compensation as very dissatisfying, as did 46 percent of all district court judges.

III. Adequacy of Compensation

To investigate further the role that compensation plays in judges' satisfaction with their current career, the survey questioned judges about their perceptions concerning the adequacy and appropriateness of their current judicial salary. In differentiating between adequacy and appropriateness we distinguished between that level of compensation which individual judges feel is necessary to meet the demands of daily living (and the costs of maintaining an acceptable standard of living) and the level of compensation suitable for the nature of the work judges undertake and the level of professional achievement they have reached.

Seventy-six percent of all the responding federal judges sitting on circuit or district courts report that their current judicial salary is not adequate for their needs. Ninety-three percent feel that the compensation received by judges on their court is not appropriate. As perceptions of adequacy may be affected by factors such as the age of the judge, his or her family situation (e.g., number of children at or approaching college age), and overall family income levels, levels of satisfaction with current compensation were examined controlling for these factors.

Again, on the assumption that judges who have taken senior status may have different, presumably lesser demands on income, the perceptions of the senior status judges with regard to adequacy and appropriateness of current compensation were compared to those of the active judges. Our assumption that there would be a difference between these two groups was accurate at least as with regard to adequacy of compensation. While 58 percent of the senior judges feel that their current salary is inadequate, 81 percent of the active judges indicate that their salary is not adequate for their needs. The difference between the active and senior status judges was far less with regard to perceptions of appropriateness of compensation. Eighty-five percent of the senior judges report that they feel that the compensation level for judges on their court is inappropriate, as do 95 percent of the active judges.

Perceptions about adequacy and appropriateness might possibly be affected by the level of court upon which respondents sit, given the differences between base salary levels for those sitting on district courts and those on the circuit courts. Table 2 shows the perceptions of the judges on the various courts with regard to adequacy and appropriateness.

Table 2

Adequacy and Appropriateness
of Compensation*

	Adequate		Appropriate		
	Yes	No	Yes	No	(Ns)
All Federal Judges	23%	76%	6%	93%	(557)
Senior status	41	58	14	85	(114)
Active	18	81	4	95	(443)
All Circuit Court Judges	29	68	5	94	(123)
Senior status	36	60	8	88	(25)
Active	27	70	4	96	(98)
All District Court Judges	21	78	6	93	(434)
Senior status	43	57	16	84	(89)
Active	16	84	4	95	(345)

* Percentages may not add to 100 due to rounding or due to the fact that some respondents in a particular category did not provide a response to a given question.

In addition to the differences between the active and senior status judges in terms of their perceptions of adequacy and appropriateness of compensation, there is a difference between the judges on the circuit courts and those on the district courts in terms of their perceptions of adequacy of compensation. District court judges are more likely than circuit court judges to report that their current judicial salary is not adequate to meet their needs. Eighty-four percent of the active district court judges find their salary inadequate compared to 70 percent of the active circuit court judges who share that perception. It is interesting to note, however, that there is really very little difference between judges, when categorized by status or court, in terms of their perception of appropriateness of compensation.

we can conclude that virtually all federal judges believe that the level of compensation they receive is inappropriate.

IV. Effects of Perceptions Regarding Adequacy of Compensation

This evidence of dissatisfaction with current levels of judicial compensation leads us to ask about the effects this dissatisfaction might have on the judicial system. Such a level of discontent may significantly lower morale on the bench, but more importantly, judges may react by seriously considering other career options available to them.

While we can not directly quantify the effects that dissatisfaction with compensation may have on morale, we can say something about the willingness of individual judges to serve out their full tenure on the bench. In this portion of the analysis only the responses of the active judges are examined, since senior status judges have, by their actions, already indicated that they are committed to extending their judicial tenure.

Twenty-eight percent of the responding active circuit and district court judges report that they have changed their original intentions with regard to the duration of their tenure on the federal bench and that they wish to reduce that term of service. This finding raises three questions: first, why are judges willing to leave the federal bench; second, how do those judges who have expressed such an intention differ from those who indicated no desire to do so; and finally, what effect might such an exodus have on the federal bench if these intentions are translated into action?

The responding active judges who indicate that they will shorten their planned judicial tenure were asked to identify the factors which were important in their decision and also to assess the importance of each of these factors. Table 3 displays the results of that inquiry. As shown in this table, compensation is not only a very important factor in the decision of individual judges to shorten their tenure on the bench, it is clearly *the* most important factor.

Table 3

Evaluation of Factors
Affecting Decision to Shorten Tenure*

Factors	Very Important 1	2	3	4	Not At All Important 5	Ns
Low level of monetary compensation	85%	7%	3%	3%	3%	(117)
Large size of caseload	24	23	13	13	27	(112)
Low levels of staff support	5	6	15	17	57	(109)
Low level of community prestige	0	10	16	14	60	(111)
Low level of overall job satisfaction	2	5	23	19	51	(110)
Preclusion from involvement in community service	6	15	25	15	38	(111)
Good career opportunities available off the bench	27	26	14	8	26	(113)

*Percentages may not add to 100 due to rounding.

Availability of career opportunities off the bench and the burdens of large caseloads may also be important factors acting in concert with compensation to influence judges' decisions to leave the bench. Their importance, however, is secondary. We can say this with certainty because those judges who expressed an intention to shorten their planned tenure were asked not only to rate the importance of the various factors in their decision but also to rank them. Eighty-five percent of the judges who chose to rank each factor ranked low levels of compensation as the most important factor in their decision. Only 7 percent ranked large caseloads as the most important factor and 3 percent ranked other career opportunities as such. These latter two factors were more likely to be ranked by respondents as the second or third most important factors in their decision to shorten their planned term of service on the federal bench.

If compensation is indeed a critical factor in judges' decisions to shorten their originally planned tenure of service, then we can test the strength of this explanation by examining other relationships addressed within the questionnaire. For example, looking back at evaluations of various elements of current career satisfaction (see Table 1), is there a difference between the "leavers" (those active judges who will shorten their planned tenure) and the "stayers" (those active judges who will not reduce their planned judicial service) in terms of their expressed satisfaction with their current level of compensation? The answer to this inquiry is yes. The judges who indicate an intention to shorten their planned judicial service are significantly more likely (at a $p = .001$ level) than those who did not wish to shorten their tenure to say that they are dissatisfied with their level of compensation. Judges who report that they would shorten their planned tenure were also significantly more likely (at a p = .001 level) to say that their salary was not adequate to meet their needs.

These distinctions raise the question of whether or not there were any other significant variations between the leavers and stayers. To address this issue we began to assemble a profile of the judges who wish to reduce their planned tenure so that we could contrast it to that of judges who have not changed their intentions about the duration of their judicial service.

The first question we might ask is whether or not there is a difference between the "leavers" and "stayers" based upon the level of federal court upon which they are currently sitting. We found that there was essentially no difference between the district court judges and the circuit court judges in this regard. Twenty-seven percent of the responding active federal circuit court judges and 29 percent of the active district court judges will reduce the planned term of their judicial service.

Another factor that might distinguish between leavers and stayers is the number of years they have served on the bench. The issue here is whether there is a burn out factor. There are two ways of addressing this question; we can examine the number of years judges have spent in their current position on the federal bench and also the total number of years respondents have invested in judicial service at all levels. The distinction may be important as slightly more than 50 percent of the active judges currently sitting on either a circuit or district court began their judicial service on that same court. To further develop our profile of leavers it would be important to know if "career judges," those with experience on at least two courts, are more or less likely to change their planned tenure than those who have served on only one court.

Table 4 displays the distribution of leavers across various experience categories defined by the number of years of service on the level of court on which respondents are currently sitting. The implications in the patterns exhibited in this table are obvious. Although 27 percent of all the respondents express an intention to shorten their planned tenure on the federal bench, the distribution of leavers was not even across the various experience categories. Almost one-third of the responding federal active judges who have served in their current position for more than four and fewer than 13 years are at least considering a reduction of their originally intended term of judicial service. Those who had been on their current bench for 5 to 8 years are more likely than those in other experience categories to have changed their plans about the duration of their judicial service.

This distribution is perhaps not surprising if it is assumed that those individuals new to the bench have not yet felt the effects of inadequate compensation over time and those judges who have been on their current bench for 13 or more years have fewer career alternatives available and lesser demands on salary. However, an important implication of this pattern, in addition to the fact that almost one third of the judges in the 5 to 12 year category want to shorten their planned tenure thereby depriving the federal bench of their experience, is that the new judges will ultimately move into those middle experience categories and also plan to leave at a similar rate.

Table 4

Distribution of Judges by Years of Service in Current Position and Tenure Expectations

Years in Current Position	Percent Leavers	Percent Stayers	(Ns)
1 - 4 years	19%	81%	(135)
5 - 8 years	36	64	(114)
9 - 12 years	32	68	(100)
13 - 16 years	29	71	(45)
17 or more years	26	74	(31)

Another way of looking at the judges in each experience level who wish to reduce their planned term of federal judicial service is in relation to all the federal judges who are considering such an action. Table 5 shows these relationships. This table tells us that slightly over half of all the judges who wish to shorten their originally intended duration of tenure have served on the court on which they are currently sitting between 1 and 8 years. Seventy-seven percent of all the leavers have served on their current court for between 1 and 10 years. What is implied here, assuming that number of years of service on the bench is roughly correlated to age, is an exodus of experienced judges with a substantial remaining period of potential judicial service.

Table 5

Distribution of Judges Expressing Intention to Leave the Bench before Retirement by Years of Service in Current Position*
(N=120)

Term of Service on the Federal Bench	Leavers
1 - 4 years	22%
5 - 8 years	34
9 - 12 years	27
13 - 16 years	11
17 or more years	7

*Percentages may not add to 100 due to rounding.

Another segment of our analysis focussing on the number of years of judicial service as a factor in judges' decision to shorten their tenure is an examination of the total number of years of judicial service. Table 6 shows the distribution of leavers as a percent of all judges in each experience category. This distribution pattern differs from the one seen in Table 4; it does not peak in one category and taper off to either side of that "high risk" group. There were two experience categories where the percentage of leavers exceeded the overall rate of 27 percent. A third or more of the judges with a total of 5 to 8 years or 13 to 16 years of judicial experience reported that they will shorten their planned tenure on the bench.

It might be noted that although the percentage of leavers in the 9 to 12 years' experience category is not as high as it is for the 5 to 8 and 13 to 16 years' experience categories, the total number of judges in that group is substantially higher than any of the other experience categories. The number of judges in this category who plan to leave may be similar to the number of judges in the apparent higher risk categories. In fact, Table 7 shows that this is the case.

Table 6

Leavers as a Percent of All Judges
in Various Experience Categories

Years of Experience	Leavers	Stayers	(Ns)
1 - 4 years	19%	81%	(86)
5 - 8 years	33	67	(83)
9 - 12 years	25	75	(106)
13 - 16 years	37	63	(68)
17 - 20 years	26	74	(50)
21 or more years	26	74	(47)

Table 7 looks at each experience group as a percent of all judges who wish to shorten their originally intended term of service. Fifty-nine percent of these judges have served 12 or fewer years on the bench; slightly less than one third of the leavers have 8 or fewer total years of judicial service. Here again we see that those judges most likely to leave are those who have the most to offer the judicial system in terms of longevity.

Table 7

Distribution of Judges by Total Number of Years of Judicial Service*

Years of Judicial Service	All Regular Federal Judges N=403	All Leavers N=108
1 - 4 years	14%	13%
5 - 8 years	16	23
9 - 12 years	29	23
13 - 16 years	14	21
17 - 20 years	13	11
21 years or more	15	10

*Percentages may not add to 100 due to rounding.

We next examined the relationships between each of these various factors--total years of judicial service, number of years on court of current service, and whether or not respondents had served on more than one court--and the desire to shorten planned tenure to test the strength of each. Of these three factors having to do with career patterns, only the number of years on the current court was significantly related (at a p = .10 level) to the intention to reduce the duration of judicial service.

The distribution described above leads us to conclude that another variable is more important than number of years of judicial service in developing a profile of the leavers. One could posit that there is an age at which the demands on income are greatest and where the window of opportunity for career change is largest. It follows that we would see the trend in desire to leave the bench peaking at this point. Table 8 presents data on the rate in each age group at which judges express the desire to shorten their judicial tenure.

Table 8

Distribution of Leavers By Age

Age	Percent of Judges Expressing Desire to Shorten Tenure	Number of Judges in Age Group
38 - 42 years old	18%	17
43 - 47 years old	30	40
48 - 52 years old	29	59
53 - 57 years old	32	87
58 - 62 years old	31	101
63 - 67 years old	26	89
67 or older	15	41

Taking as a guideline the fact that 28 percent of all active judges said that they will shorten the length of their originally planned tenure on the bench, we see that those between the ages of 43 and 62 are more likely to leave. This may be a result of demands on income and availability of alternative career opportunities. Federal judges who are between 53 and 57 years of age are more likely than those in other age groups to express a desire to shorten their term of judicial service.

Another factor which may play a role in the decision of an individual judge to shorten his or her tenure on the bench is the effect of judicial salary on total family income. Those judges with lower family incomes may be more inclined to leave. Table 9 shows us the percentage of all respondents in each of several income categories. It also compares the leavers with the stayers. We observe that the judges who say that they have not changed their plans regarding duration of judicial tenure are slightly more likely to be experiencing higher family incomes than those who wish to stay.

Table 9

Total Family Income

	All Active (N=423)	Leavers (N=117)	Stayers (296)
$ 80,000 - $ 89,999	5%	7%	4%
$ 90,000 - $ 99,999	20	21	20
$100,000 - $124,999	35	37	33
$125,000 - $149,999	17	20	16
$150,000 - $199,999	13	9	15
$200,000 - $249,999	5	3	6
$250,000 - $299,999	3	5	2
$300,000 or more	3	0	4

Total family income may not present the whole picture however. If the judges who wish to shorten their tenure are experiencing total family incomes comparable with those who wish to stay, but are relying on one and a half or two wage earners to achieve that income level, then the effect of income may be stronger than it appears in Table 9.

We found that there was a significant relationship (at a p = .003 level) between the number of wage earners in a family and the reported total family income. Higher family incomes were generally attributable to more than one wage earner in the family. We also found that those who will shorten their originally planned tenure are somewhat more likely than those who will not to report more than one wage earner contributing to the family income. Forty-two percent of those who wish to shorten their judicial service reported that another partial or full salary is included in the total family income compared to 36 percent of those who do not wish to reduce their tenure.

Although we can not fully gauge the effects of an exodus of federal judges from the bench, we can speculate to some degree. The loss of a jurist who decides to retire and not take senior status deprives the judicial system of judges with substantial experience and of an opportunity to ease the caseload burden. The loss of a younger judge also costs the judicial system in terms of the real dollar costs of selection, training and socialization of new judges as well as the effect that such a disruption has on caseloads.

Up to this point, we have been looking at the effects of compensation on judges' intentions to reduce the duration of their judicial tenure without getting a feel for the original intention about that term of service. Does this expression of changed interest mean that judges originally planning to take senior status rather than retire from the bench completely are no longer willing to take that option, or does it mean that judges will not even stay on the bench until retirement age? Fifty-seven percent of the active federal judges who responded to the survey report that they plan to leave the full-time bench at retirement age. Another 13 percent did not identify their specific intentions with regard to the number of additional years they will remain on the bench. (It should be noted that 20 of the 52 active judges in this category report that they will shorten their originally planned judicial tenure.) The remaining 30 percent of the responding judges plan to leave the full-time bench prior to retirement. Table 10 presents data on the expected duration of respondents' federal judicial careers.

Table 10

Duration of Tenure on
the Full-time Bench
(N=443)

Planned Departure	Percent of All Active Judges
Before retirement in:	
1 - 2 years	3%
3 - 5 years	6
5 - 10 years	12
More than 10 years	9
At retirement	57
No response	13

To clarify the potential loss to the system of the judges planning to leave the bench before retirement, we categorized these judges by the number of years of service they had on their current bench and compared it to their expected remaining service. Table 11 presents this comparison. We can see that 71 percent of those who plan to leave the full-time bench before retirement will leave in the next 10 years; 30 percent will leave in the next five years. Fifty judges who currently have between 1 and 8 years experience in their current judicial position plan to leave the bench in the next 10 years. The effects of this exodus on the judicial system are likely to be pronounced.

Table 11

Distribution of Active Judges
Leaving the Bench before Retirement
by Number of Years Service on Current Bench*
(N=126)

Planned Departure	Number of Years in Current Position 1-4	4-8	9-12	13-16	17-20	20+	Row Percent
1 - 2 years	3%	2%	0%	2%	0%	2%	9%
3 - 5 years	4	7	5	2	2	1	21
5 - 10 years	7	16	10	5	2	1	41
10 years or more	17	6	4	3	0	1	31

*Percentages may not add to 100 due to rounding.

V. Selection

Much of the discussion in the media regarding judicial salaries has focussed on the effects of compensation on judicial selection. Our survey examined this issue as well. The question here is whether or not the level of compensation is a deterrent to attracting highly qualified candidates to the federal bench. We began by asking how important a role compensation played in the initial decision of individual judges to go on the bench. Whether the salary applicable to respondents' first judicial position was an improvement or reduction of their prior compensation was not addressed. The question posed was whether compensation was important in relation to other factors in the decision to accept a judicial appointment.

A number of factors which might play a role in an individual's decision to go on the bench were presented to the survey recipients. They were asked to evaluate each of these factors on a five-point scale in terms of their own decision. As can readily be seen from Table 12, the relative importance of compensation was perceived as quite low compared to other considerations. The desire to serve the community was by far the most important factor in respondents' decisions to pursue a judicial career. The desire to affect the development of the law and career enhancement goals were also fairly highly rated by the judges. These findings fit with the evidence that newer judges express a somewhat lower level of dissatisfaction with compensation than those who have experienced the effects of that level of compensation over time. While 19 percent of the judges with one to four years experience in their current position have shortened their expectations with regard to judicial tenure, 36 percent with 5 to 8 years experience have done so.

Table 12

Reasons for Acceptance of Judicial Positions

Reasons	Very Important 1	2	3	4	Not At All Important 5	Ns
Desire to serve the community	68%	19%	10%	2%	1%	(536)
Monetary compensation	3	6	29	26	36	(509)
Career enhancement	25	27	20	12	16	(507)
Desire to affect the development of the law	34	35	20	7	5	(518)
Desire to leave the practice of law	4	11	16	18	51	(498)

The figures which appear in Table 12 present the aggregate responses of all federal judges. We disaggregated these responses in several ways to see whether there were differences in perceptions among the respondents about the role compensation played in their initial decision to go on the bench. We analyzed them by status, court, career paths, and by intentions regarding duration of judicial tenure.

It is interesting to note that there was very little difference between active and senior status judges or between leavers and stayers in terms of the level of importance placed on compensation as a factor in their initial decision to go on the bench. However, while most of the respondents said that compensation was not at all important or rated it very low in terms of importance, district court judges are slightly more likely than circuit court judges to say that it was an important factor in their decision. The federal judges who had also served on state or other special courts are less likely than those who had served only on federal district or circuit courts to say that compensation was not at all important in their initial decision to go on the bench.

The next level of inquiry made concerning the role of compensation in the selection process was to ask respondents how important they felt a number of factors were in bringing highly qualified candidates to the federal bench. This question was intended to address several issues. The first was to determine how judges evaluate each factor which may play a role in the decision process of a potential candidate for the federal bench and to develop a picture of the relative importance of each factor when compared to the others. The second issue was to examine indirectly the way currently sitting judges might re-evaluate the importance of compensation considerations in their original decision to go on the bench.

Table 13

Importance of Various Factors in Attracting Highly Qualified Candidates

Factors	Very Important 1	2	3	4	Not At All Important 5	(Ns)
Selection process	57%	21%	15%	5%	3%	(525)
Level of court on which vacancy occurs (trial/ appellate)	21	30	25	13	11	(506)
Monetary compensation	37	23	15	11	14	(526)
Career opportunities available after serving a term(s) in the bench	5	8	19	27	42	(501)
Status within the profession	46	39	11	3	1	(517)
Perceptions about opportunities to affect the administration of justice	42	40	13	4	1	(518)
Perception of caseloads	8	18	39	21	13	(498)
Desire to perform public service	53	36	10	1	--	(521)
Desire to leave private practice of law	3	20	32	23	21	(496)

Two factors were rated "very important" by over 50 percent of the respondents. These two factors were the selection process itself and the desire to perform public service. Perceptions about the status of such positions within the profession and the opportunity to affect the administration of justice were also rated highly as important factors in attracting highly qualified candidates to the federal bench by a substantial number of the respondents. Surprisingly, a much stronger emphasis was placed on compensation in response to this inquiry than we might have expected based on our data on the respondents' own reasons for going on the bench. Thirty-seven percent of the responding judges indicated that compensation was a "very important" factor in attracting highly qualified candidates; 60 percent felt that it was at least somewhat important. Only 14 percent felt that compensation was not at all important.

The fact that slightly over one-third of the judges who responded to this question felt that compensation was a "very important" factor in attracting highly qualified candidates to the bench could have critical implications for the selection process. If the perceptions of currently sitting judges are a reflection of attitudes of potential candidates, compensation is becoming an issue of increasing importance in the initial decision to embark on a judicial career.

A breakdown of the respondents by age category might be useful in telling us whether the age groups we have previously identified as most unhappy with their own salary are translating their own dissatisfaction to notions about how others will perceive compensation levels. If, however, the perception of the importance of salary as a factor in the decision of highly qualified candidates is fairly even across the spectrum of age groups, we might at least presume that the view is a pervasive one. Table 14 presents this analysis.

Table 14

Distribution of Assessment
of Compensation as a Selection Factor
by Age of Judge

Age	Very Important 1	2	3	4	Not At All Important 5	(Ns)
38-42 years old	29%	29%	12%	12%	18%	(17)
43-47 " "	33	28	5	18	15	(39)
48-52 " "	44	26	4	11	16	(57)
53-57 " "	31	19	26	12	13	(86)
58-62 " "	38	24	12	8	18	(95)
63-67 " "	43	20	17	9	11	(92)
67 or older	34	24	19	13	10	(128)

Age is not an important factor in perceptions about the importance of compensation as a factor in bringing highly qualified candidates to the federal bench. There is no obvious pattern as there was when leavers and stayers were compared. For example, the two age groups placing the highest level of importance on compensation are those between 48 and 52 years of age and between 63 and 67 years of age. Additionally, while there are some differences among the age groups in terms of the "very important" ranking, the range of variation in the "not at all important" category is small. At least 50 percent of the respondents in each age group felt that compensation played an important role in attracting (or perhaps not dissuading) highly qualified candidates.

This attitude regarding compensation and its role in the selection process, if it is a reflection of how potential candidates feel, cuts across age groups. Not only may it be difficult to attract established lawyers in their 50's who must make a choice to reduce their income substantially, but younger lawyers who may be attracted by the public service aspects and opportunities to affect the development of the law will also assess a higher opportunity cost to the choice to go on the bench because of the negative effect of compensation.

VI. Conclusion

Compensation does appear to play a significant role in the level of satisfaction federal judges attribute to their current position on the bench. Seventy percent of all of the federal judges who responded to the survey report that they are at least somewhat dissatisfied with the level of compensation they receive. No other factor, including independence or workload, contributes as much to their overall dissatisfaction with their current position on the bench.

Seventy-six percent of the survey respondents feel that their current salary is not adequate for their needs. Ninety-three percent of the federal judges do not feel that their compensation is appropriate for the nature of the work they undertake and the level of professional achievement they have achieved. It is not surprising that one of the effects of these perceptions about compensation is to cause judges to leave the bench. Twenty-nine percent of the active district court judges and 27 percent of the active circuit court judges will shorten the originally planned duration of their federal judicial service. The principal reason they cite for this action is dissatisfaction with their current level of compensation.

These judges who will shorten their planned tenure on the bench differ in some respects from those who are not planning to reduce their term of service. Not surprisingly, they are more likely to feel that their compensation is not adequate to meet their needs. Their total family income is somewhat lower than that of those who have not changed their intentions about tenure. Also it is more likely that a spouse is contributing to that income to bring it to its current level. Judges who have 5 to 8 years' experience in their current position are more likely than those at other experience levels to indicate that they will shorten their planned tenure. While age is not a strong predictor in terms of the desire to leave, except in that the youngest and oldest judges are least likely to have changed their intentions, we found that judges between the ages of 53 and 57 are most likely to express an intention to shorten their tenure. Seventy-one percent of the judges who plan to leave the full-time bench prior to retirement will leave in the next 10 years.

While the federal judges who responded to the survey may not have considered compensation an important factor in their own decision to embark on a judicial career, their current experience and concerns about compensation appear to be influencing their opinions about the importance played by compensation in bringing highly qualified candidates to the federal bench in the immediate future. Sixty percent of the federal judges feel that compensation is at least somewhat important and only 14 percent deem it not at all important.

The potential effects that compensation, particularly at current levels, can have on our federal judiciary are substantial. It is affecting perceptions of job and career satisfaction to the extent that federal judges with life tenure will leave the federal bench prior to retirement. Additionally, compensation also may affect the ability of the federal bench to attract highly qualified candidates in the near future. Judicial compensation clearly should be recognized as an issue of concern and addressed accordingly.

STATE MERIT SELECTION COMMISSIONS

A Preliminary Report

Merit Selection Commissions have been established in a number of states for the purpose of identifying qualified applicants for vacancies which arise on the bench for all levels of state courts. These Commissions, generally composed of judges, lawyers, and laymen, identify three individuals whose names they present to the chief executive who makes a selection from this list. As an important component of a large project to assess the effects of compensation on judicial selection and tenure, a survey was undertaken to examine the success these Commissions are experiencing in bringing suitable candidates to the bench. A questionnaire was designed which touched upon issues related to the jurisdiction of each Commission, the procedures followed to identify candidates, and the perceptions of the Commissioners with the regard to the effectiveness of their Commission's role in identifying highly qualified candidates for judicial positions. A copy of this questionnaire is appended to this report as Appendix A.

The questionnaire was mailed to the chairs of Merit Selection Commissions in 35 states and the District of Columbia. The chairs of the various Commissions were selected as the survey recipients as they were more likely than other Commissioners to have a broader view of the process and to have experienced a longer term on the Commission. The Commission chairs are also likely to be the Chief Justice of the state supreme court. At least one response was received from all but one of the jurisdictions included in the original mailing. A total of 77 separate Commissions were represented by a completed

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questionnaire for an 84 percent response rate. A list of the respondents included in our analysis appears in Appendix B.

The following is a preliminary discussion of the data drawn from this survey. It focuses on the perceptions of the Commission chairs on the role compensation plays in attracting highly qualified candidates to the bench. The analysis is generally done on two levels. The first uses the separate commissions as the unit of analysis; the second uses the states or jurisdictions as the base upon which percentages are calculated. The second tier of analysis is done to factor out the effects of the states which have more than one Commission.

The threshold level of inquiry was to ask whether or not the Commissioners felt that there was a sufficient number of highly qualified individuals wiling to serve on the bench for each vacancy that they sought to fill. Fifty-six percent of the Commissioners report that in their opinion this was not the case. Table 1 presents the assessment provided by the respondents of the quality of the candidates they interviewed for judicial vacancies. The majority of the Commission chairs feel that only one fourth or fewer of the people they interviewed were highly qualified.

Table 1

Rating of Candidates Interview by the Commissioners
(N=74)

	Percent				
Rating	0%	1-25%	26-50%	51-75%	75-100%
Highly Qualified	3%	72%	19%	4%	3%
Qualified	0	26	51	18	5
Poorly Qualified	12	49	34	5	0
Unqualified	22	68	11	0	0

We next investigated possible factors which might be dissuading individuals from undertaking a judicial career. The majority of the survey respondents in their role on the Commission actively engaged in interviewing candidates. We asked these respondents to evaluate, based on their personal contacts with candidates, how important they felt each of a number of factors were in the decision of these candidates not to seek a judicial position. Table 2 presents the results of this inquiry. The percentages are based on the total number of responses from the separate Commission chairs.

Table 2

Importance of Factors in Candidates Decision Not to Seek a Judicial Position* (Commissions)

	Importance					
Factors	Very Important				Not At All Important	(Ns)
Code of Judicial Conduct problems	13%	4%	11%	26%	46%	(54)
Perceptions of judicial isolation	5	16	23	28	28	(57)
Would rather practice law	39	25	22	8	5	(59)
Compensation perceived as inadequate	62	23	5	3	7	(60)
Prestige perceived as low	0	12	15	13	60	(52)
Lack of interest in particular court on which vacancy has arisen	11	20	30	17	22	(54)

*Percentages may not add to 100 due to rounding.

It can be seen from Table 2 that compensation is perceived as the most important factor in dissuading candidates from seeking state judicial positions. Sixty-two percent of the respondents feel that the candidates' perception that compensation levels are inadequate is a very important reason and a total of 85 percent feel that it is at least somewhat important. Only 7 percent of the responding Commissioners felt that perceptions about the inadequacy of compensation were not at all important in candidates' decisions not to accept a judicial position. Another factor cited as important by over half of the respondents was the fact that potential candidates do not wish to leave the practice of law.

Table 3 presents another view of this question. For the purposes of this table, respondents from Commissions within the same state were aggregated and the percentages are calculated based on the number of states represented in the respondent pool. For example the responses of the 14 Florida Commission chairs were averaged and counted as one response. These weighted responses show us a similar picture. Compensation again appears as the most important deterrent to attracting potential candidates to the state bench.

Table 3

Importance of Factors in Candidates
Decision Not to Seek a Judicial Position*
(Jurisdictions)

	Importance					
Factors	Very Important				Not At All Important	(Ns)
Code of Judicial Conduct problems	4%	4%	15%	27%	50%	(26)
Perceptions of judicial isolation	0	12	31	35	23	(26)
Would rather practice law	21	39	32	4	4	(28)
Compensation perceived as inadequate	57	29	0	7	7	(28)
Prestige perceived as low	0	0	19	23	58	(26)
Lack of interest in particular court on which vacancy has arisen	7	21	38	7	28	(29)

*Percentages may not add to 100 due to rounding.

As the perception of inadequacy of compensation was so frequently reported as a deterrent in attracting candidates, we wanted to assess whether or not the Commissioners themselves felt that compensation levels for the various state courts were adequate. Seventy-five percent of the respondents felt that the level of compensation for the courts for which their Commissions have the responsibility of finding candidates is not adequate.

To further put the role of compensation in perspective, the respondents were presented with a list of factors which may affect the ability of the judicial system to attract highly qualified candidates and asked to evaluate their importance in the selection process. These factors included procedural elements of the selection process as well as those which are characteristics of judicial service. The data in Table 4 reinforce the importance Commission chairs place on compensation as a factor in the recruitment process. Seventy-eight percent of the respondents indicated that compensation is a very important factor in attracting highly qualified candidates. When compared to a list of other factors which may be expected to have an effect on the ability of a Commission to identify and recruit highly qualified candidates, compensation is clearly the most important factor in achieving this end.

Table 4

Importance of Various Characteristics of Judicial Service in Attracting Highly Qualified Candidates* (Commissions)

	Importance					
Factors	Very Important				Not At All Important	(N
Vacancy notification procedures	23%	7%	15%	23%	33%	(7
Notification period	15	10	16	25	34	(7
Active Commission role in identifying candidates	20	17	27	11	25	(7
Time available for Commission activities	14	18	17	22	29	(7
Financial and/or support services for Commission	12	10	19	17	42	(6
Compensation	78	15	3	1	4	(7
Size of support staff	9	34	28	22	7	(7
Funds for automation of court administration	5	21	23	31	20	(7
Community prestige	22	38	19	14	8	(7

*Percentages may not add to 100 due to rounding.

Table 5 restructures the data to aggregate the multiple responses from those states which have several Commissions. Again we see that changing our unit of analysis does not alter the picture we see in terms of the relative importance assigned to each factor.

Table 5

Importance of Various Characteristics of Judicial Service in Attracting Highly Qualified Candidates* (Jurisdictions)

	Importance					
Factors	Very Important				Not At All Important	(Ns
Vacancy notification procedures	15%	9%	21%	36%	18%	(33
Notification period	9	6	28	28	28	(32
Active Commission role in identifying candidates	13	23	39	10	16	(31
Time available for Commission activities	9	16	22	28	25	(32
Financial and/or support services for Commission	7	10	21	24	38	(29
Compensation	55	21	12	12	0	(33
Size of support staff	6	33	33	27	0	(33
Funds for automation of court administration	2	3	11	12	5	(33
Community prestige	21	39	24	12	3	(33

*Percentages may not add to 100 due to rounding.

To further assess the effects of compensation on the selection process, the respondents who indicated that they feel that the current levels of compensation for the vacancies over which the Commission has jurisdiction are inadequate were asked to identify the reasons they feel that this is the case. Table 6 presents the results of this inquiry. Ninety percent of these respondents feel that inadequate compensation is a deterrent to attracting highly qualified candidates. It was interesting to note that in addition to the effects on selection, a retention problem was suggested as a consequence of inadequate salary levels. Sixty percent of the Commissioners who feel that compensation levels are inadequate also feel that such a low level of compensation causes sitting judges to leave for other positions.

Table 6

Why Do You Feel Compensation
Levels Are Inadequate
(N=58)

Reasons	Percent
Deterrent to attracting highly qualified candidates	90%
Affects perceived prestige of position	41
Causes sitting judges to leave for other positions	60
Not comparable with that for similar judicial positions in other states	43

As the Commissioners participating in this survey have the responsibility for identifying qualified candidates for all tiers of state courts, their experiences and opinions are extremely valuable in identifying the strengths and weaknesses of the selection process. The findings from this preliminary look at the data from the survey clearly point to the significant role compensation levels play in attracting highly qualified candidates to the bench. Merit Selection Commissions are faced with a task critical to the justice system and in evaluating their success in achieving their goals, the Commissioners generally feel that while the merit selection system works well, improvements could be made. They would like to see the number of highly qualified individuals interested in judicial service increased and clearly one way of accomplishing this is to address the issue of compensation levels of the state judiciary.

STATEMENT OF THOMAS W. EVANS, PRESIDENT, FEDERAL BAR COUNCIL

Mr. EVANS. Mr. Chairman and members of the committee, my name is Tom Evans and I am president of the Federal Bar Council. Our council includes members, almost 3,000, in the various States, New York, Connecticut, and Vermont, of the Second Circuit. We range from single practitioners in Vermont to lawyers with active suburban practices in Connecticut to senior litigating partners of large law firms.

Our practice typically is national in scope. Lawyers from our firms practice in States throughout the country in virtually every Federal court.

I am not going to repeat our statement, but I would like to focus on some of the highlights and some of the things perhaps that haven't been mentioned in any detail previously.

If I may, I would like to call to your attention a young man whom we hired last year. This man was sought after by many law firms. He was number one in his class. He also happens to be the son of a Federal circuit judge. When we hired him, his salary was below that of his father. He is now in his second year, and his salary will come close to that of his father. In the third year this young man 3 years out of law school about equivalent to a Federal circuit court judge and in excess of the salary of Federal district court judges. I assure you we have no desire to give money away. We are forced to these salaries by the competition to get the very finest law school graduates, but it is lamentable that the salaries of our Federal judiciary have not kept pace and that this father will soon be earning less than his son.

Of course, the caseload for the Federal judges, the district court judges, in the last 20 years have gone up 50 percent and the appellate judges have gone up 100 percent at the time, as this committee has pointed out earlier, that the earning power of the judges have gone down some 30 percent in that same period of two decades.

I would like to focus for a moment on something that pertains among judges that we do not have with other officials and that is that Federal judges are expected to serve for a lifetime. Alexander Hamilton in Federalist Paper No. 78 pointed out the tremendous importance to the independence of the judiciary of lifetime appointments. But practically speaking, this means that Federal judges cannot after brief service go back into the marketplace, catch up and increase their earnings unless the entire constitutional scheme of lifetime appointments is disrupted and set aside.

Our Federal Bar Council in another committee focused on another problem that we have in the Federal judiciary and that is the problem of vacancies. The report of our subcommittee pointed out that through June 1988 and the prior year, there had been 51 vacancies filled in the Federal judiciary. The average time of the vacancy of those that were filled in that year was 15 months.

Now, this is another problem that has to be addressed in the course of the judicial appointment process. But the effect right now on matters before this committee are dramatic and immediate. It means that if the one-third of the judges which the ABA survey shows are currently dissatisfied with their compensation and thinking of resigning do resign and we anticipate an average of 15 to 18 months to replace them, that the Federal courts will literally be shut down by this process. So, we point out that the problem is grave and amounts to an emergency.

Federal judges these days are asked to do a great number of things. In addition to maintaining the status of liberty, to protecting the concerns and freedom of our citizens, they are asked to run school systems. They are asked to decide cases which have immediate and major effect on American commerce. We want to have the very best people on the bench, and we want them to be independent. And we certainly cannot do so in the present framework of compensation.

Last night I was speaking with one of our Federal judges, and I asked him what the morale was on the bench in the Second Circuit at this time. He said we are undergoing a sense of disheartenment. The judges' morale is low. This too is a bad condition under which to adjudicate key cases.

I would conclude by pointing out the words that Alexander Hamilton used when he endorsed—and, of course, later the founders of our country adopted—the idea of lifetime appointments. He said unless we did that, we would not have the firmness and independence necessary—and I quote—we would not be able to preserve the Federal judiciary "as the citadel of public justice and the public security".

Our founders were charged with the responsibility of creating lifetime appointments to ensure the independence of the Federal judiciary. I submit that unless the Senate and the Congress of the United States act at this time to provide adequate compensation for our just judges, you will do great violence to the constitutional scheme that established an independent judiciary.

Respectfully submitted.

Federal Bar Council

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SUBMISSION BY THE FEDERAL BAR COUNCIL TO THE HOUSE OF REPRESENTATIVES COMMITTEE ON POST OFFICE AND CIVIL SERVICE

I. Federal Bar Council Perspective

The Federal Bar Council, which represents lawyers who practice in the Second Judicial Circuit (New York, Connecticut and Vermont) and includes among its members the leading litigators and virtually all the judges in the region, is vitally interested in the issue of the salaries of federal district court and appellate judges, as well as those of magistrates and bankruptcy judges. As practicing lawyers in the Federal Court, in both civil and criminal cases, we are extremely interested in the character, intelligence, stature, dedication and tenure of the men and women who serve on the Federal Bench. We, and every responsible group who has looked at this issue, wholeheartedly concur with Chief Justice William H. Rehnquist's conclusion that the salary issue is the most serious problem facing the judicial branch at

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the present time, with respect to both recruiting and retaining highly qualified judges.

The members of the Federal Bar Council range from single practitioners to senior litigating partners of major law firms and general counsels of major corporations. These lawyers practice in the Second Circuit and are also called upon to represent clients in cases in federal courts in many other parts of the country as well. A significant percentage of our members have served in public practice -- in U.S. Attorneys' offices, as counsel to federal and legislative committees, on municipal commissions and a variety of other posts. We believe the views we bring you today are those of an experienced, highly representative and concerned segment of the American Bar.

On behalf of our members, the Federal Bar Council strongly endorses a significant and immediate increase in federal judicial salaries.

We are familiar with the bases on which the 1989 Seventh Quadrennial Commission recommended a 50 percent immediate salary increase for all Federal Judges, from the current salary of $89,500 to $135,000 for district judges and an increase from $95,000 to $140,000 for circuit court judges, and fully concurred with that recommendation.*

Of the recommendations currently before the Committee, we believe the best alternative to be that of the National Commission on the Public Service, chaired by Paul A. Volcker, which recommended a 50 percent salary increase for all Federal Judges implemented in two steps, 25 percent immediately and 25 percent in 1991. Although we clearly would prefer the Volcker Commission's recommendation, as an alternative, we also support Chief Justice Rehnquist's proposal of a 30 percent immediate increase to all Federal Judges and a mechanism to assure that Federal Judges are protected against future inflation by some form of annual cost of living adjustment.

We do not intend to repeat many of the same arguments that were made so eloquently by the Chief Justice last week, or those contained in the strongly documented support which was submitted to the Congress by both the 1989 Quadrennial Commission and the Committee on the Judicial Branch of the Judicial Conference of the United States, chaired by Hon. Frank Coffin of the United States Court of Appeals for the First Circuit.*

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* The Trustees of the Federal Bar Council unanimously adopted a resolution in February of this year, which endorsed the 1989 Quadrennial Commission's recommendation of an immediate 50% increase. 1989 Commission on Executive, Legislative and Judicial Salaries, Fairness For Our Public Servants.

We do speak, however, from the unique perspective of practicing lawyers who appear every day before the Federal Court in civil and criminal matters and who represent individuals, corporations, unions, trade associations, classes of people whose rights are at issue in discrimination and pro bono publico cases, among many others.

II. The Current Inadequate Salary Structure

The current salary level of the Federal Bench presents a deplorable situation. Since 1969, at a time average civil and criminal case loads have substantially increased (i.e., 53 percent increase per judge for district court judges; 100 percent increase for appellate judges), because of inflation, Federal Judges have lost 30 percent of their purchasing power.**

We believe that the salaries of Federal Judges should be compared with those of their peers, not with the average per capita income nationally for all jobs or professions. Federal Judges do not expect to be paid the same amount as they could earn in the private sector; however, the differential has been allowed to become so great that it is simply unfair and intolerable, and the intangible benefits of serving on the bench -- the prestige and security -- simply cannot compensate.

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* "Simple Fairness - The Case for Equitable Compensation of the Nation's Federal Judges."

** The Quadrennial Commission recommendations would only have restored the lost purchasing power of the last two decades.

While the judiciary is still a public service, one cannot ignore the compensation of the private sector, particularly members of the legal profession who appear before the Federal Judges. We who practice in the Second Circuit are acutely aware that at a time when the responsibility, pressure, power and independence of the judiciary are unmatched in most areas of law and business, Federal Judges each day face the fact that around the country large numbers of associates at large and medium size law firms and corporate law departments, including former law clerks to the Federal Judges, within 2-3 years after graduation receive higher compensation than the judges on the Federal Bench before whom they appear. Within seven to ten years, the disparity between the two is vastly greater.

We do not believe that the average national salary is the appropriate yardstick. Those on the Federal Bench do not have "average" professional responsibilities; rather they are at least commensurate with those of senior executives in industry, business, law and science. Viewed against that backdrop, the reality is that $89,500 for district court judges and $95,000 for appellate court judges simply does not adequately compensate our Federal Judges.

Furthermore, the judiciary, unlike members of Congress, do not earn substantial amounts of supplemental income from honoraria. While judges may speak, teach or write on legal and non-legal subjects as long as those activities do not detract from the dignity of the office or interfere with their judicial duties, the Code of Conduct for United States Judges severely restricts most forms of outside earned income for judges. Because of these restrictions and because judges must avoid even the appearance of impropriety concerning litigants and the issues which appear before them, honoraria remain relatively minor sources of supplemental income. For example, the Quadrennial Commission reports that in 1987, only 110 of 907 Federal District and Circuit Court Judges reported accepting any honoraria. Only nine of these judges received more than $5,000 for the year.

III. Judicial Morale

There has been a dramatic (and undisputed) increase in the Federal judicial workload over the same twenty year period in which judges have seen their salaries effectively reduced by 30 percent. The juxtaposition of these two trends has had a predictable impact upon the morale and commitment of Federal Judges. A 1988 survey of Federal Judges (which had a response rate of 90%) makes clear that, while judges have great satisfaction with the opportunity for public service and the legal and intellectual challenges of their work, they simultaneously feel that they are being "taken advantage of," "demeaned" and "singled out for grossly unfair treatment." We of the Federal Bar Council are aware of many similar comments from the Federal Judges within the Second Circuit to the effect that the denial of a salary equivalent in real terms to that of 1969, as the Quadrennial Commission recommended, demonstrated a callous disregard of economic need and a disrespect for the stature of the Federal judiciary. We believe unless a significant increase in compensation is implemented immediately, the morale among the Federal judiciary will precipitously decline.

Additionally, those who remain on the bench will be subject to undesirable concerns about their families, particularly those judges with college-age children. As Judge Leon Higginbotham of the Fifth Circuit Court of Appeals stated before the Quadrennial Commission, there is real concern by the judiciary about their ability to provide the same quality or type of education opportunities which the Federal Judges themselves had. This is a sad commentary on the country's view of its judicial system and its judges, contributing no doubt to the low morale of these distinguished jurists.

Common sense and experience lead us to conclude that, under present circumstances, judges will be hard-pressed to continue to provide the level of commitment that service on the Federal Bench requires; after all, as Justice Hugo Black observed: "Judges are not essentially different from other government officials...[or] the rest of mankind...." Even a small, subconscious diminution in commitment by a judge to his or her workload would clearly have a direct impact on the quality of justice.

IV. Likely Resignations

It should be no surprise that Federal Judges anticipated that Congress would accept the Quadrennial

Commission's recommendation of a 50% increase for all Federal Judges. It also should be no surprise that many of these Judges were stunned when the Congress voted against any increase on February 7. We believe that, unless a substantial salary increase is given to the Judges in the very near future, there is the real probability that many sitting Federal Judges, including those in the Second Circuit, will resign. Based on a canvassing of all 13 circuit court executives in the wake of the February 7 actions by Congress, on April 27 Judge Frank Coffin testified to that potential disaster before the House Judiciary Subcommittee on Courts, Intellectual Property and the Administration of Justice.

We also believe that increased judicial salaries would stem the recent trend of early resignations from the Federal Bench where the primary reason given has been inadequate compensation. A recent study by the American Bar Foundation found that 28% of the Federal Judges are considering leaving the bench early if judicial salaries are not increased; those most likely to leave are between the ages of 53 and 57, with five to eight years of experience. As Chief Justice Rehnquist pointed out, an unprecedented number of Federal Judges who fit that profile have already left the bench because of financial pressures.

V. The Vacancy Problem

Valuable skills and services are lost when judges leave the bench; an equally serious problem is the length of time it takes to replace them and bring new judges up to a level of effectiveness comparable to the judges they have succeeded. On January 31, 1989, the Federal Bar Council's Second Circuit Courts Committee reported on the seriousness of the judicial vacancy problem.* In the year ending June 30, 1988, the 51 judicial positions that were filled had been vacant an average of more than 15 months; as of August 1, 1988, there were 36 judicial vacancies, ten of which had been vacant for 18 months or more (such a duration qualifies as a judicial emergency). In the three federal courts whose jurisdiction includes New York City, Congress adjourned in October of 1988 without acting on six of seven vacancies; two of the vacancies in the Southern District of New York have gone unfilled for more than two years. This problem is compounded by the length of time it takes for a new judge to gain the insights and experience of the judge he or she is replacing. Former Chief Justice Burger has estimated that "it takes five years for a qualified attorney to reach peak efficiency as a Federal Judge." The impact of this situation on the federal judiciary's ability to dispense justice in a fair, prompt and inexpensive manner is glaringly evident.

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* The impact would be even greater if those judges with senior status resigned from the bench, with full pay, as they are permitted to do by law. In the Second Circuit, these judges make a tremendous contribution to the Court and the administration of its substantial case load.

VI. The Shrinking Pool of the Most Qualified

We believe strongly that many of the lawyers most qualified for judicial service are opting out of the selection process. This conclusion is based upon reports by Justice Department officials, judges, and Senatorial screening committees which help evaluate judicial candidates. Each of these sources have cited many outstanding lawyers who are not permitting their names to be put forward for consideration. This is not to say that there are not sufficient numbers of lawyers in the private sector or academics who wish to become Federal Judges. However, our society should put a premium on attracting the broadest range of the most qualified attorneys. If, by the compensation offered, more and more of the potential pool of the most qualified lawyers shrinks, surely the end result will be felt in the quality of justice.

We in the Federal Bar Council are also aware of many situations in which lawyers who otherwise would have made substantial contributions to public service by accepting federal judicial appointments have withdrawn from contention because of financial restraints and the widening disparity between the compensation of the Federal Bench and that available in the private sector.

This is particularly true with respect to attorneys in private practice who are in their mid-40's and early 50's who have 15 to 20 years of trial practice experience and who have families. It is at this stage of their professional careers that these attorneys have the necessary experience, maturity, vigor and health to sit for many years on the federal district court, with all its complex legal issues and pressures. Nevertheless, our conclusion is that it is precisely these potential applicants who, because of financial considerations regarding their families, particularly with college-age children to educate, have been constrained from leaving the private sector for the Federal Bench.

The strength of the federal judiciary has been its ability to attract extremely competent men and women to join the Bench from all aspects of the practice, from all backgrounds, with different experiences and points of view and who will remain on the Bench for many years, giving the judiciary great stability. Another consequence of the departure of many Judges will be the loss of this Court's pluralism. The future pool of candidates could well be reduced to only those attorneys who have either independent wealth, those in their late 50's or early 60's who do not intend to provide a significant number of years on the Bench, or those zealots who wish to pursue a certain philosophical or political agenda. Another inevitable consequence of continued low salaries is that some candidates could view the Federal Bench not as a position of lifetime tenure, but as a 3-6 year station before going to the private sector and substantially increased salaries. We submit that none of these scenarios is acceptable. As the complexity of economic, legal, social and political disputes have become greater, the risk of a judiciary which is not highly qualified or independent becomes intolerable to our society.

VII. The Implications of Lifetime Tenure

Unlike members of the Executive and Legislative branch of our government, Federal Judges are expected to serve for a lifetime. Our founding fathers provided this unique tenure to insure an independent judiciary. We wholly endorse this rationale. It does, however, prevent judges from accepting more remunerative employment after a brief tour of public service, as can happen in the other branches. Since Judges cannot catch up financially by leaving the Bench after a brief tenure -- without upsetting the constitutional premise under which they are appointed -- we believe that the argument for an increase in their compensation is all the more compelling.

Conclusion

Federal Judges have been called upon to run school systems and prisons, enforce antidiscrimination laws for entire cities, decide whether to permit or stop multibillion dollar mergers, administer class actions and massive toxic tort suits, and decide the most sensitive of social issues such as abortion, and freedom of speech and religion. We believe the federal courts have handled these issues in the most honorable fashion. It is our experience that the overwhelming number of litigants who appear before the Federal Courts, whether they win or lose in the litigation, believe that Federal Court process and the Federal Judges have treated them most fairly.

The issue now is whether Congress can take the needed steps in salary reform to enable our Federal Judges to continue that level of performance and to maintain their traditional independence and be fair to the Federal Judges.

The Federal Bar Council strongly endorses a significant and immediate increase in Federal judicial salaries.

Respectfully submitted,

FEDERAL BAR COUNCIL

William P. Frank
C. Evan Stewart
Kevin N. Whitney
Richard F. Lawler
Steven M. Edwards

Members of the Subcommittee on Judicial Salaries of Committee on Second Circuit Courts

Mr. MacCrate. Mr. Chairman, may I respond to a question that Representative Morella addressed to Judge Murphy? What are you going to do to help us? What are you going to do to get out the message to the constituents around the country?

We are engaged in enlisting the bar organizations throughout the United States. We are putting into their hands materials that we are going to encourage lawyers all over the country to go with their constituents and identify what is the need and the reasons, and hopefully to help them make some of the responses to the constituents concerns that Judge Murphy made in testimony to the committee, but to get out that kind of information responsive to the individual citizen's concerns in this regard. We recognize that we as representatives of the profession in the country have an obligation to do this, and we will do everything we can to help support your efforts.

Mr. Evans. I would like to respond to that also. We have written to our membership. We are today meeting with the Washington partners of a number of the firms that are included in our membership about the most effective things that we can do to assist you in gaining passage of the legislation that is before you now. We believe also that we can through our national clients and our national practices carry this forward to lawyers and businessmen and others throughout the country.

Mr. Ford. Did you want to pursue your question?

Mrs. Morella. Yes, thank you. I have another appointment too.

Thank you very much for that courtesy, and I appreciate your doing that because lawyers are in probably even a better position to go out and do the lobbying and get the information. Indeed, they certainly care about the administration of justice.

In talking to some of my constituents about the need for pay raise for all branches and in citing the judicial branch as an example, I have had several people at town meetings who have said but the judicial branch has such a healthy retirement system that that more than compensates for the need or the vacuum of a raise for the buying power to increase. I wondered if you might want to comment on that. I have been trying to find out what their retirement is. My understanding is that after I think it is 10 or 15 years at age 65, it is full salary. And if they go on senior status, they get full salary plus cost-of-living increments. Otherwise, if they don't have the senior judge status, they can get full salary without the additional cost of living. Now, that is pretty nice.

Mr. MacCrate. It might take care of their future lives. But the concern is with their present lives and their obligations today. And the fact that they may be able to survive in their later years on the compensation that they then receive is no answer to what they have to face today in meeting the burden of living. And I think to suggest that if a public servant has a future benefit it in some way diminishes the responsibility of government paying a fair and just wage today escapes me, as to how that could possibly help people today.

Mrs. Morella. I know. The follow-up question to an answer like that—which I think is a great answer, you have to take care of now, before 65—would be would they then be willing to have a system such as the Civil Service Retirement System.

Mr. **MacCrate.** Well, of course, the retirement compensation for Federal judges is constitutionally mandated. It is appointment for life. And that is the essence of the position and the further provision that their compensation shall not be diminished while in office.

Mr. **Ford.** Maybe one of you gentlemen could straighten it out for me. I have the impression that more judges are "retiring" than taking senior status. What is the real difference? Is a retired judge then free to practice law?

Mr. **MacCrate.** The judges who retire completely invariably enter into the practice of law. If judges take senior status, they can still sit as judges, and most of them assume a tremendous burden of work.

Mr. **Ford.** But in addition to that, they continue to be under the restraints on outside income, do they not?

Mr. **MacCrate.** All of these restraints are applicable to a sitting senior judge.

Mr. **Ford.** So, if judges could, like the civil servant, retire at 65—approaching my 62nd birthday, I like to tell people lawyers are only getting really good at 65. [Laughter.]

Can you detect that more judges are being lost to the pool that senior status provides to retirement because they want to spend 5 or 10 years trying to build up an estate?

Mr. **MacCrate.** Those who are leaving the bench are leaving at earlier years, and as this survey to which I referred pointed out, the vulnerable age period is 53 to 58.

Mrs. **Morella.** If the Chairman would yield for a moment.

If they are retiring, according to your survey, at that age with 5 to 8 years' experience, do they vest at year 5?

Mr. **Evans.** I don't think they get a penny. I would like to just speak about the basic retirement.

As I understand it, a judge has to get 80 points before he is entitled to his retirement benefits, and if he is 65 years old, that means you would take the 65 years and add to it 15 years of service. That was loosened up slightly last year so that you could at 65 add 13 years of service, and he would at age 67 be deemed to have 80 points even though he had retired at 65. So, if I am correct in that—and I think I am—every employee of my law firm has a better retirement system than the Federal judges. It vests early. They can take it with them. They are much better off.

I would say also in the Second Circuit, by the way, we are very pleased to have the senior judges. Without them, practicing and carrying a very significant caseload—that is, the practicing of judges—we would simply not be able to maintain the caseload at all. They fill a vital and necessary function. And the tradition is to remain in active status for the years in which they can carry on the work, and many of them do it into their seventies and eighties.

Mrs. **Morella.** You realize I'm an advocate for the pay increases. I am trying to play devil's advocate in terms of getting at what this system is in terms of whether there are these extra benefits that kind of enhance the status so I can respond to it too.

Mr. **Evans.** Yes.

Mrs. **Morella.** Thanks, Mr. Chairman.

Mr. GILMAN. Just on the retirement aspect, if you would clarify for me, when a judge does retire and then goes on active status as a senior judge, he receives full pay. Is that correct?

Mr. MACCRATE. Yes.

Mr. GILMAN. But no retirement benefits.

Mr. MACCRATE. No retirement benefits as such.

Mr. GILMAN. Until he leaves senior status.

Mr. MACCRATE. Yes. To get retirement benefits, you have to retire.

Mr. GILMAN. Why couldn't he just continue? What is the benefit of retiring and going on senior status?

Mr. MACCRATE. Well, if he or she completely retires, then the restraints with respect to the things that they may do expire.

Mr. EVANS. I believe the judge who takes senior status and sits as a judge is doing so at a time when, if he had simply retired, he would be making virtually the same income. He is doing it as an accommodation to the bar and in the sense of public service.

Mr. GILMAN. Why retire?

Mr. EVANS. Why retire? Well, to possibly go to one of those farms that the Chairman was talking about and simply enjoy the fresh air and the relaxed life.

Mr. GILMAN. No, but you say he is going on to senior status. I am talking about the judge who elects to go on and become a senior judge. Why would he retire and then elect to go on a senior judgeship? He is continuing full pay, is he not, not getting any retirement benefits? What are the benefits of his retiring?

Mr. MACCRATE. The freedom that he gets to do other things.

Mr. EVANS. He can go on to do something else. The judge who is taking senior status is not getting any increased benefit over the retirement benefit. He is working as a judge and fulfilling a significant role at what amounts to a sacrifice in terms of his time.

Mr. FORD. Would the gentleman yield?

Mr. GILMAN. I would be pleased to yield to the gentleman.

Mr. FORD. Let me see if I can help. There has to be a distinction made between a judge that retires, using the word "retirement", and a judge that merely retires from full active duty to become a senior judge.

In the case that you used in your statement, he might, by that time, go to work in his son's law firm at a comfortable salary and have more time to visit the horses on the farm. [Laughter.]

But isn't that really how the decision is made? Retirement as distinguished from staying on the bench for virtually the rest of your life——

Mr. EVANS. I think that was what Mr. MacCrate was talking about.

Mr. FORD. And whether or not you feel you have enough productive years left. And you may have established yourself at some time as the outstanding expert in some field that would have Wall Street salivating to have your name on the door.

Mr. EVANS. I think it is important, at least as I understand it, that if that judge retires from the bench earlier than 65, before he accumulates the necessary retirement points and does exactly what you are talking about, Mr. Chairman, and becomes an expert in the field and goes into practice, he would not be receiving his retirement benefits. He would be waiving those benefits by dint of not having sufficient points to have vesting as it would in virtually every civil pursuit.

Mr. GILMAN. And if I might just continue. Having received his full 80 points, retires and then goes on to be an active judge, he gets no retirement benefits.

Mr. MACCRATE. If he retires, he does not go on to be an active judge.

Mr. GILMAN. Well, when do you receive this senior status that you are talking about?

Mr. MACCRATE. When a judge takes senior status and continues to sit, that is not retiring in the normal sense.

Mr. GILMAN. What has he done to achieve senior status?

Mr. MACCRATE. It is the same rule of 80 that applies that qualifies the judge for senior status.

Mr. GILMAN. He is not then considered to be a retiree. Is that what you are saying?

Mr. MACCRATE. No, not at all.

Mr. EVANS. No.

Mr. MACCRATE. No. He is still an active member of the judiciary. I use active in the de facto term, not in the distinction that is drawn.

Mr. GILMAN. Well, is the only benefit then that he has a reduced workload?

Mr. MACCRATE. It is a workload that he can control.

Mr. GILMAN. I see.

Mr. MACCRATE. But God bless them. They are the ones that make the Federal system work today in many places in the country. In our Second Circuit, from which Mr. Evans and I both come, as well as Representative Gilman, we have a situation in our courts that is dealt with only because of the voluntary contribution of our senior judges.

Mr. FORD. Well, help us with this. I believe the position is called the court administrator who sits over here in Virginia. When an area of the country or a particular jurisdiction finds itself overwhelmed with its caseload, doesn't he have, within the bounds of health and other considerations, the authority to take from this pool of senior judges and send people out of this pool?

Mr. MACCRATE. It is more in the nature of a request, Chairman Ford, than it is——

Mr. FORD. But I have had the impression that there is a professional gentleman's agreement that people will accept these.

Mr. MACCRATE. I think in fact that is just how it works, but there is not that power in the circuit executive. But it is still regarded as an obligation by the senior judges, when they get such a request, to respond.

Mr. FORD. I have a friend—and I think he was here when Mr. Gilman was here—who was appointed to the bench from the Congress by Jerry Ford and experienced health problems and took senior status. Each time I have seen him over recent years, he has interesting stories about where he has been. They seem to send Jim Harvey all over the place. He becomes sort of a roving fireman. There is a fire going here at the time. The judges who normally are sitting in district court are tied up with prolonged litigation, and they send him in for a period of time to help clear up the docket.

When I was practicing law, it took you about 4 years to get to trial with a negligence case. I don't know if it is any better. That is probably one of the most difficult things you have explaining to people who are clients that they are going to get justice four years after the fact, after you file the suit.

In the Eastern District of Michigan, which is Detroit where I practice, it was not at all uncommon to have a three year excess waiting period to get to trial.

I had the impression that one of the values to the whole system was the availability of judges who were almost like interchangeable pieces of an automobile. If you have a flat tire and you could bring somebody in as the spare to keep from falling even further behind. Isn't that the way it works?

Mr. MACCRATE. That is a power that was provided which has been very helpful. But Chief Justice Burger placed a limitation on judges moving out of any circuit that had someone brought into that circuit to sit, and in the recent past, I understand that Chief Justice Rehnquist has excluded the senior judges from that prohibition and, therefore, the senior judges are more flexible with respect to their assignments today than are the so-called active judges of the bench.

Mr. GILMAN. Well, are the senior judges entitled to outside income?

Mr. MACCRATE. No. They are subject to the same limitations that an active judge is.

Mr. GILMAN. Do we have any idea of what the percentage of our Federal judiciary is on senior status?

Mr. MACCRATE. I have seen the figure, and we will provide it to the committee, but I do not have it on the top of my head.

Mr. GILMAN. Mr. Chairman, if we could make that part of the record.

[The information referred to follows:]

ABA
AMERICAN BAR ASSOCIATION Governmental Affairs Office
1800 M Street, N.W.
Washington, DC 20036
(202) 331-2200

May 15, 1989

Honorable William D. Ford, Chairman
Post Office and Civil Service Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the American Bar Association, I want to thank you once again for your diligent efforts on behalf of federal employees and, in particular, your unwaivering leadership on the pay raise issue. The Bar has a special responsibility to ensure the effective functioning of the justice system and will continue to devote our resources to gaining approval of significant judicial pay raises. Please feel free to call upon the ABA to assist you in your efforts to see that the salaries of top federal officials are set and maintained at appropriate, fair levels.

During the course of my testimony on May 10, I was asked to provide the Committee with more information on the administrative judiciary and senior judges. I respectfully request that the information I am transmitting here be included with the information I submitted for the record at the hearing on the Volcker report.

The Administrative Judiciary

The statement on behalf of the American Bar Association I previously filed with the Committee addresses the need for a significant pay raise for the federal judiciary. The statement does not differentiate among the federal judiciary because it is our intention to communicate to the Committee that substantial increases in the compensation of all federal judicial officers are long overdue -- Article III judges, the judges of the Tax Court, the U.S. Claims Court, the Court of International Trade, the Court of Military Appeals, as well as Bankruptcy judges, Magistrates, Administrative Law judges, and Board of Contract Appeals judges.

It is vitally important that Congress address the salary needs of all segments of the federal judiciary. However, Administrative Law Judges and Board of Contract Appeals judges present a special case. I would like to address separately here the needs of this unique group of valued public servants.

At the Association's Midyear meeting in Denver, February 6-7, 1989, our House of Delegates unanimously approved the following resolution:

> BE IT RESOLVED, that the America Bar Association supports and encourages enactment of special pay legislation designed to provide compensation levels for the federal administrative judiciary that establishes and maintains parity which previously existed with other federal senior executive personnel.

The federal administrative judiciary is within the executive branch and includes administrative law judges, appointed to serve pursuant to 5 U.S.C. §3105, and administrative judges serving as members of federal boards of contract appeals, appointed pursuant to 41 U.S.C. §607. The statutory framework under which they are appointed and serve is designed to assure decisional independence.

The judges of the administrative judiciary conduct hearings and issue decisions in agency adjudications or rulemaking which touch the daily lives of all citizens and affect the national and world economy. They are functionally comparable in their duties and responsibilities to Article III federal judges. Matters within the jurisdiction of this administrative judiciary may be exclusive or concurrent with federal courts and includes issues ranging from claims by individuals and businesses, including small business, to rate-making, government procurement and licensing to name but a few. It is imperative that the quality of appointees to the administrative judiciary be of the highest caliber and that the government be able to retain those highly qualified individuals currently serving.

The 1978 Civil Service Reform Act created the Senior Executive Service (SES) composed of the top echelon of the federal civil service. It includes the executive branch's managerial, supervisory, professional and technical leadership. The option to become part of the SES was not offered or available to administrative law judges and administrative judges who are members of boards of contract appeals. Accordingly, the administrative judiciary was expressly excluded from the SES. Congress took this step to insulate these judges from political pressures and to preserve the judges' decisional independence and ensure the fairness of the adjudicative process in the federal agencies. Certain conditions and emoluments of the newly created service, such as performance appraisals and pay bonuses are incompatible with the requirement that administrative judges be independent and impartial even with respect to the federal agency in which they are employed.

In 1979, the pay levels were comparable for top level general schedule employees and for those who exercised the option to become part of the SES. However, the methods of establishing compensation levels for SES members and the general schedule employees now differ, resulting in serious pay inequities between these two groups of employees. Since the establishment of the SES, the disparity between the maximum allowable compensation payable to SES members and to individuals excluded from SES has widened significantly, to the detriment of the administrative judiciary.

This disparity in pay between the SES levels and the federal administrative judiciary has caused severe problems in attracting and retaining the highest quality individuals to fill vacancies. A major source for the recruitment for these judicial positions historically has been the top level government attorneys who now are in the SES ranks. Many are no longer willing to consider appointment as judges since it would mean a decrease in salary. As a result, candidates are younger and less experienced, and in some instances, perceive the appointment as an intermediate position leading to one of greater importance rather than, as in the past, representing the culmination of a federal career. It is anticipated that the situation will be exacerbated if the disparity is permitted to continue or, as anticipated, to grow. Many of the more senior judges will leave the administrative judiciary to seek SES positions, since this not only will increase their current income, but also will have a substantial impact on the retirement payments to which they will be entitled.

The American Bar Association urges that during your consideration of legislation to increase the salaries of top government officials, that you create a mechanism to establish pay parity for the administrative judiciary.

At the hearing you received the report of the Forum of United States Administrative Law Judges, "Administrative Law Judges: A Case Study of Recruitment and Retention Concerns." I am enclosing a briefing paper prepared by the Board of Contract Appeals Judges Association which also fully explains the inequities of the current salary structure for the administrative judiciary. */

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*/ Retained in official hearing file.

It is indeed unfortunate that the senior judge system has been engulfed by the controversy over the President's pay recommendations. It is essential that the public understand the workings and contributions of this system and abandon the ill-advised call for "reform". In this case, reform is unnecessary and would only serve to destroy a system that has served this Nation well for 71 years.

I appreciate this opportunity to supplement my statement and look forward to working with the Committee on this important issue.

Sincerely,

Robert MacCrate

Enclosure
6322A

cc: Committee Members

Mr. Ford. Is it a safe assumption from the statistics that have been brought here today that there are more people taking retirement than in the past and therefore fewer people ending up in the senior status than before?

Mr. MacCrate. That is certainly the prospect, the direction in which we are moving with all these retirements. They will not be available. And if they, on the other hand, reached the age to take senior status, they would otherwise be available.

Mr. Ford. When I looked at what the judges gave us here in their appendix, one of the responses they had was that I'm leaving. I have reached the stage where I have sold all the assets I could sell primarily because of the cost of my children's education, and have put myself and my family in a position where I feel the only thing I can do is reenter the practice of law and attempt to get back again. If that is a commonly held view of people out of this 81 percent who say that compensation is a serious problem for them, it would seem to predict that you are going to have fewer and fewer of these people staying around to take senior status and more of them electing to go out and use the productive years as professionals that they have.

It ill-behooves us sitting in the Congress to suggest that professionals ought to quit at 65 when probably the most energetic chairman we have in the whole place is 86 years old. And anybody who has tried to keep up with Claude Pepper who is 30 years younger than him and doesn't acknowledge that not all of us age at the same rate or slow down at the same rate is just not paying attention.

I had nurtured the hope that there is life after Congress, and I suspect that judges are thinking the same thing, are they not?

Mr. MacCrate. Well, they are appointed for life, and there are some who still look to the judiciary and intend to remain in it. We are deeply indebted to them when they do.

Mr. Gilman. Just one more question, Mr. Chairman.

Have you taken into consideration any pay equity for administrative law judges in your consideration?

Mr. MacCrate. We have not addressed that in the same way. I believe that our Judicial Administration Division has within it the administrative law judges. And they have recently initiated a study in this respect. I do not believe that we have yet an association position, but I would anticipate that we would.

I stand to be corrected on that. We now do. I am not up to date.

Mr. Gilman. Could your assistant tell us what the position is? Could you identify yourself please and come up to the mike?

Ms. Emsellem. I'm Irene Emsellem with the ABA Governmental Affairs Office in Washington.

Although the association has not come up with an exact dollar recommendation for administration law judges as we have with respect to the Article III judges, we have recognized that the administrative judiciary—the administrative law judges and the Board of Contract Appeal judges—is a very important element in the judicial structure. The ABA recommends significant increases for them also in recognition of the great responsibilities they bear.

Mr. Gilman. And what about the referees in bankruptcy? Have you given any consideration to them?

Mr. **Evans**. Congressman Gilman, the Quadrennial Commission report points out that the bankruptcy judges, magistrates and various court administrators receive an increase in pay by dint of Federal law when the Federal district court and appellate court judges get an increase in compensation. I think it is an 81 percent——

Ms. **Emsellem**. It's 92.

Mr. **Gilman**. So, they would be included in any general revision that we might make in salaries.

Mr. **Evans**. That's right.

Mr. **Gilman**. Thank you.

You say Board of Contract Appeals. Are there any other judicial offices or quasi-judicial offices in the Federal system that we have not taken into consideration?

Ms. **Emsellem**. I think that the administrative judiciary is the only part of the system that is not already keyed to a percentage of Article III judges' salaries.

Mr. **Gilman**. Thank you. Thank you, Mr. Chairman.

Mr. **Ford**. I think that there is a statutory link between the bankruptcy judges and the Federal district judges or circuit judges. I'm not sure which. It sets their pay so that automatically they are carried upward whenever we carry the Article III judges up. I believe that is the way their pay is set.

Mr. **Evans**. That is my understanding of it as well.

Mr. **Ford**. And I think it is 92 percent of a district judge.

Thank you very much, gentlemen.

Mr. MacCrate, I would just unlike to tell you I am happy to see my union in here working on right side of an issue for me.

Mr. **MacCrate**. If I am not mistaken, my father 60 years ago served on this committee.

Mr. **Ford**. Well, we have restored it to the way it was 60 years ago, but we have the same pay system we had when he was here. That is part of our problem.

Mr. **Gilman**. It is good having you with us.

Mr. **Ford**. First will be Judge Alan Heifetz, President, accompanied by Judge Bruce Birchman, Legislative Chairman of The Forum of U.S. Administrative Law Judges, and Judge Seymour Fier, Administrative Law Judge, and I would recognize the gentleman from New York to welcome Judge Fier.

Mr. **Gilman**. Thank you, Mr. Chairman. I am pleased to welcome Judge Fier who happens to be a classmate of mine, and we are pleased that he has taken an interest in the administrative law judges who are sort of left out there hanging all alone in this review of salaries. We welcome having our administrative law judges come before us because we recognize there is a disparity and there needs to be some equity. We welcome having you with us today, Judge Fier.

STATEMENT OF JUDGE SEYMOUR FIER, ADMINISTRATIVE LAW JUDGE

Judge **Fier**. Thank you, Mr. Chairman. I appreciate having the opportunity to come here. I appear here on behalf of myself and other administrative law judges who are similarly situated.

The crux of my presentation is in my statement that I submitted to the committee and I will only try to add to it in a capsule form. I realize that the time is of the essence, and I will try to make my statement brief.

I have been an administrative law judge since 1968, and I have served in the capacity of an administrative law judge, a chief administrative law judge, a regional chief administrative law judge, and I have also served in other capacities in the city, State, and Federal Governments.

In my capacity in these various positions, I have made various observations, and I am principally addressing my observations today to the statement that I submitted. In that statement I urged the committee to recognize, once and for all, the fact that the grade 15 administrative law judges and the grade 16 administrative law judges, because of the complexity of the work that is performed by the administrative law judges, two grades are of a comparable nature. The complexities are the same. The monetary values are the same. The economic values are the same.

There is one additional factor that I think should be brought forward. The administrative law judges in the grade 15 generally comprise a majority of the administrative law judges and are mainly assigned to the Social Security Administration.

As the Congress well knows, the Social Security Administration is concerned with dealing with the public. We deal on a one-to-one basis with the public in that the effect of our determinations will generally affect one person. However, the cases that we do decide are not limited to one person because they have far-reaching effects.

Some of the cases that a grade 15 administrative law judge in Social Security will hear can have far-reaching ramifications and, in particular, I have had several cases within the past year which involve the future of many thousands of people and also involve many hundreds of millions of dollars in one case. I have set those forth in my statement and they are merely representative of the types of complexities that grade 15 judges do hear.

Having served as a grade 16 judge and as a grade 15 judge, I think I am in a position, having 21 years of experience as an administrative law judge, to recognize the fact that the type of work performed in both capacities are similar, the complexity is the same, and the importance is also the same. It would be my urging that the committee in its recommendations recognize the fact that the two grades should be considered as one.

I would also ask that the committee, in addition to considering the grade structure as being one, should also consider the fact, as we have heard this morning presented by our other speakers, that the structure of salary is one that affects us all. I think that, speaking quite frankly, the Congress must establish an image with the public, and in so doing, we want to see that the public has the finest representation from the Federal Government in the form of administrative law judges whom they meet on a face-to-face basis. We want to attract the best and we want to keep the best.

I would at this time indicate to the committee that while I appear here on my own behalf, I think that I speak for most of the administrative law judges in my agency, Social Security, although I have appeared and served in other grade 16 super grade agencies. I thank you.

[The prepared statement of Judge Fier follows. The paper which was submitted, giving a brief background and entitled, "The Administrative Law Judge in the Administrative Process" is placed at the end of the hearing. See p. 763.]

STATEMENT OF

JUDGE SEYMOUR FIER

ADMINISTRATIVE LAW JUDGE

I thank you for the opportunity to appear and testify about the specialized work performed as an Administrative Law Judge in Grades-15 and -16. Being one of many Administrative Law Judges, I would like to share with you some of my observations and experiences.

Personally, I have served in City, State and Federal Civil and military service for a total of almost fifty years. I have been an Administrative Law Judge for the past twenty one years both as a GS-15 and GS-16. I have also served in more than one Federal Agency in the capacity of Acting Chief Judge, Regional Chief Judge, and Administrative Law Judge. I was also on the Executive Committee of the Conference of Administrative Law Judges of the American Bar Association; Administrative Law Committee of the Association of the Bar of the City of New York; and a member of the Faculty of the National Judicial College.

It is with this background that I appear here to unequivocally state that the functions and responsibilities of the Administrative Law Judge in the capacity of a GS-15 or GS-16 must and should be viewed as being of equal complexity and flexibility.

Attached is a copy of a brochure distributed by the American Bar Association which gives a brief background of the Administrative Law Judge (Attachment -1). As far as I know Administrative Law Judges are the only Judges who must take a written test and undergo the same rigorous and comprehensive qualification process as other Judges. We are a product of the Congress who recognized the importance of our duties in both adjudicative and rulemaking proceedings. Many of the Regulatory laws which Congress enacts come to life essentially because "something happened". When a case comes before the Occupational Safety and Health Review Commission, Securities and Exchange Commission, National Labor Relations Board, Social Security Administration, or any of the other Agencies, the impact, importance and responsibility for assurance that the intent of Congress is being carried out is the prime function of the Administrative Law Judge. (Attachment-2. U.S. News and World Reports-November 1, 1982).

The disparity in grade structure of GS-15 and GS-16 is outdated and no longer truly identifies any distinction in the expertise required for work as an Administrative Law Judge. For some time now Senator Heflin has been urging passage of unified Corps Bill which would essentially abolish the distinction in assignment of Administrative law cases to Administrative Law Judges and would properly unify all Administrative Law Judges into one grade structure.

The essence of the above is intended here to emphasize that the distinction between the GS-15 and GS-16 grades should be discarded and laid to rest once and for all.

In my experience with the Occupational Safety and Health Review Commission, where I was classified as a GS-16, I decided safety cases which had potential dollar impact ranging from hundreds of millions of dollars to miniscule amounts.

In the Social Security Administration, I currently decide cases as a GS-15. The dollar impact of a typical disability case is often the subject of misinterpretation. Social Security cases are conceived by many, including some Appellate Courts to be of limited monetary impact. This however is not the case. The focus on legal and factual issues are often required to transcend the entire Social Security Act as well as other legislative enactments such as Worker's Compensation Laws; Veterans Administration legislation, and other related acts including but not limited to the Black Lung Law, Supplementary Security Income Laws and even Immigration laws. This is equally applicable to other Agencies utilizing GS-15 Administrative Law Judges who must also be concerned with the overlapping applicable statutes. The fact is that everytime an amendment is legislated to an existing law or Regulation or a decision of the Court modifying by interpretation of an existing law there is cause for additional understanding of the statute. It is also necessary at this point to touch upon another important factor in applying a statute on a national scale. Administrative Law Judges are referred to as "Circuit Riders" for good reason. We are required in most instances to travel throughout the country. As such in writing our decisions we must be aware that applicable rules of interpretation of the statutes vary from State to State and Circuit to Circuit. One example would be recognition of a Common Law marriage in a Social Security Benefits case. As we know there is a lack in unanimity going from State to State and Circuit to Circuit of laws and regulations.

Congress well knows the importance of the Social Security cases and so stated this in the Congressional Record in terms of dollar impact. An example of this was given by the late Senator Church who noted on September 16, 1974 at page S.16630 two examples (Attachment-3).

One hypothetical example relates to the death of a wage earner claim which would have resulted in a minimal payment of three hundred dollars. In another hypothetical case, a sum of 1,844,715 dollars would have been paid. Bear in mind that these are 1974 figures and did not include inflationary adjustments or Social Security legislative amendments. A report from the Deputy Chief Actuary in Social Security in March 28, 1974 reported that in the year 1974 the assumed automatic adjustments would average about 90,000 dollars with 56 percent higher adjustment fifteen years later (1989)(see attachments-4). While the dollar amount may vary and have limited impact on only one claimant, the value and importance of the case is not to be diminished.

In three cases, decided by me in 1988 the impact of Government funds approximated sums of perhaps as much as, $200 million dollars. Certainly, the sums in issue were most significant but even more so the cases involved the use of Federal funds provided to the States for use at Intermediate Care facilities for the Mentally Retarded and more important directly affect the level of care of approximately 2,000 institutionalized impaired individuals. It should be noted that in all of the above cases there was not only legal counsel, but in one of the cases there were three teams of attorneys on one side and several attorneys representing the Government. In addition, one case had approximately 600 exhibits and close to 4000 pages of transcript and briefs. The trials averaged four weeks in each case. While concededly this is not the typical case it assures that the Administrative Law Judge in grade GS-15 must also have the capability to deal with all measure of cases large and small. Another example to demonstrate the similarity of complexity in GS-15 and GS-16 cases can be seen from a Title XVI case involving the allegation of a violation of Civil Rights in the Mt. Vernon School System (City School District of City of Mt. Vernon, New York - Docker No. CR-1002, December 21, 1973) (attachments). Significantly, this case was heard and decided by an Administrative Law Judge who had previously served as a GS-16 Administrative Law Judge in the National Labor Relations Board before accepting the GS-15 grade with the Social Security Administration and then being assigned a Civil Rights case along with his other cases.

The impact of the Judge's decision served as a model for other such cases throughout the country. This particular Judge also held the rank of Colonel in the Judge Advocate Corps of the Army and from time to time was called upon to sit as trial Judge on military matters (Attachment-5-Civil Rights Case).

The above example is set forth to illustrate that flexibility is also required of a GS-15 Administrative Law Judge to serve in numerous capacities and responsibilities. The distinction between grades of the GS-15 and GS-16 Judge is truly a fiction that should be addressed by this Honorable panel.

A final example of this fiction can be observed from a typical air disaster where an airliner crash and the disposition of the resultant case would be heard by a Department of Transportation Judge usually GS-16.

The most recent ecological disaster involving the oil spillage in Alaska will probably come to a hearing on some aspects of the case by a GS-15 Administrative Law Judge of the Coast Guard. Other aspects of the case will be heard by a GS-16 Administrative Law Judge of the Environmental Protection Agency. Certainly, there can be no doubt that the Administrative Law cases are of enormous and economic and national importance. However, the cases will probably be decided by GS-15 and GS-16 Judge's, all with significant consequences. There can be no doubt that the intent of Congress in assigning responsibility to hear and decide these cases was to provide the best available Judicial personnel.

Both the Supreme Court and the Court of Appeals, have recognized the importance of Administrative Law Judges by stating: "Administrative Law Judges are functionally comparable to judges employed in the Judicial branch and conferred on them absolute immunity for judicial acts." (Butz v. Economou, 438 U.S. 478 (1978)).

The Civil Service Registers contain a list of candidates awaiting appointment to the various agencies as the need requires. However, the hidden factor remains that there is a potential for disaster with the disparity between pay in the Government Service and the private sector. The gap has essentially been present for many years. However, it appears that it has become very significant in the last few years. The erosion of government benefits has accelerated the problem and gives rise for concern with each passing enactment. This can be seen in the area of concern for morale and the increased number of retirements in the past few years. It is noteworthy that there is an increase in the number of former government personnel who are now actively engaged in actions against their former agencies because the reward of their labors in the private sector is more lucrative. The largest grouping of candidates now appearing on the GS-15 register are often notably less qualified and in reality are placed on the register for the lack of more highly qualified and experienced applicants who meet the desired criteria. Having sat on many qualifying Panels with officials of Office of Personnel and Management and a representative of the American Bar Association, there are now a larger number of candidates scoring the lowest acceptable grades. The realization that salary is an important factor is common knowledge to all. In a current article of the New York Law Journal, it was reported that starting salaries of first year associates in large law firms begin at about $81,000.00 dollars (attachment). This standing alone, makes a mockery of the salaries by comparison now paid our Judiciary who are of the highest standards and have accepted their appointments in the national interests (Attachment-6-A-C).

In order to maintain and attract the best legal talent needed for good and efficient government, it is necessary to be realistic and take steps now to reverse the trend and prevent an exodus of key specialists in government from leaving or declining to enter government service. It would be illogical to believe that there is no "brain drain" of highly qualified and experienced Administrative Law Judges who have been seeking early retirement and joining law firms. The end result can be disastrous in terms of applying the intent of Congress and enforcement of its Laws and Regulations. The public image reflects adversely on the Agency, the Administrative Law Judge Corps and even more so on the Congress itself when poor or inadequate service is rendered. The public under such circumstances loses faith in the Judicial process as well as the Legislative branch and ultimately becomes costly and disruptive to the Government.

I believe it would be appropriate to conclude this presentation by stating that the GS-15 Administrative Law Judges have successfully fulfilled the assignment intended by the Congress in quickly translating legislation into active benefit and regulatory programs and providing good service to the public.

When a crisis erupts with a large backlog of cases such as in the Immigration and Naturalization Service, the Administrative Law Judges have volunteered to assist in the disposition of the heavy case load.

The Attorney General in an exchange of correspondence with the Conference of Administrative Law Judges recognized the effort in the offer made by The Administrative Law Judges. In his letter of appreciation to the Administrative Law Judges he expressed his appreciation for the offer of service (Attachment-7-Attorney General). In considering all of the above I would like once again to state that there is no practical distinction between work, functions, complexities or responsibilities of the GS-15 and GS-16 Administrative Law Judges. They should be treated as one. The Administrative Law Judges of both GS-15 and GS-16 have since its inception been grateful to the Congress for its support and recognition in many of its past Committee Hearings and speaking for myself, I again do so now. Thank You.

*/ The attachments referred to were retaind in the hearing file.

Respectfully submitted: SEYMOUR FIER
U.S. ADMINISTRATIVE LAW JUDGE

STATEMENT OF JUDGE ALAN W. HEIFETZ, PRESIDENT, THE FORUM OF UNITED STATES ADMINISTRATIVE LAW JUDGES ACCOMPANIED BY JUDGE BRUCE L. BIRCHMAN, LEGISLATIVE CHAIRMAN

Judge **Heifetz**. Mr. Ford and members of the committee, on behalf of The Forum of Administrative Law Judges, a professional organization representing exclusively Administrative Law Judges at the GS-16 through 18 levels, I want to thank you for the opportunity to testify with regard to problems affecting recruitment and the retention of Federal Administrative Law Judges.

With me today is our Legislative Chairman, Judge Bruce L. Birchman, the author of Forum's Case Study on Recruitment and Retention Concerns which was provided to the committee earlier and which we would ask be included in the record.

Mr. **Ford**. Without objection it will be inserted in the record following your testimony.

Judge **Heifetz**. Thank you, Mr. Chairman. I just have a short statement to supplement.

Congress since 1978 has recognized that individuals appointed as Administrative Law Judges hold positions with tenure very similar to that provided for Federal judges under the Constitution. The United States Supreme Court has recognized that Administrative Law Judges are functionally comparable to Article III Federal judges.

Moreover, most cases before Administrative Law Judges who are members of our organization are as complex as these before Federal trial judges and in many cases more complex than those handled by bankruptcy judges and magistrates. Yet, the remuneration of bankruptcy judges and magistrates is fixed at 92 percent of the salary of a Federal district court judge, while Administrative Law Judges do not receive comparable compensation. In these circumstances, similar linkage of Administrative Law Judges' compensation to other judicial compensation would be appropriate.

Highly qualified persons both within and without the Federal Government no longer are attracted to the Federal administrative law judiciary. The failure to attract highly qualified persons to the administrative law judiciary will have long-lasting adverse consequences.

Today, over 40 percent of the specialized judges at GS–16 to GS–18 can retire immediately. These judges are the cream of the crop. They handle some of the most complex administrative hearings. They were appointed through a rigorous competitive examination process administered by the Office of Personnel Management when salary levels were high enough to attract highly qualified lawyers to the administrative law judiciary. Under present conditions, these experienced judges will retire and they will be replaced by underqualified persons.

Instead of the agency general counsels and associate general counsels who, prior to the creation in 1978 of the Senior Executive Service, were the primary government candidates, the typical government applicant is a lower level GS–14 attorney. Instead of specialized senior attorneys from the private sector, the typical private sector applicant is a solo practicing attorney with little or no complex litigation experience.

Because Administrative Law Judges, in effect, are appointed for life, the appointment of underqualified persons will result in a severe loss of competence for many years in the administrative law judiciary and a severe deterioration in the quality of adjudication in important Federal programs.

Two recent examples underscore our concern. At the Department of Housing and Urban Development, where I am the Chief Administrative Law Judge, I have been hindered in recruiting qualified judges to hear new fair housing cases because of the underqualification of candidates on the OPM register and the reluctance of presiding judges to incur the financial loss of moving to Washington, DC.

Those fair housing cases, by the way, are heard by Administrative Law Judges unless there has been an election by one of the parties to take the case to a Federal district court where it would be heard by a Federal district court judge and a jury.

At the Federal Energy Regulatory Commission, where Judge Birchman is located, three of the 22 judge positions have been vacant for some time. The agency has been unable to recruit qualified candidates for these critical jobs. And more than half of the 22 judges can retire now. The possible departure of this number of experienced judges is typical and could have a crippling effect on the orderly regulation of important segments of the Nation's economy.

It is difficult to induce qualified senior government lawyers in the Senior Executive Service to apply for specialized Administrative Law Judge positions. SES attorneys' maximum base compensation is at Level IV of the Executive Schedule compared with lesser maximum compensation of Administrative Law Judges which is at Level V of the Executive Schedule. SES attorneys are also eligible for merit pay and performance bonuses which are prohibited for Administrative Law Judges in order to ensure a fair and impartial public hearing and decision.

As our case study demonstrates, attracting qualified attorneys from the private bar to the Federal administrative law judiciary is even more difficult, if not impossible. The disparity in compensation between the private bar and Federal Administrative Law Judges, salaries of partners, senior attorneys and first-year attorneys, is even greater than the disparity between the judges' salaries and those of the SES.

And I might say, anecdotally, following the comments that you have heard this morning, one of my colleagues, who is a graduate of Amherst College and the Harvard Law School and has 30 years of experience as a trial lawyer and as a judge, was proud to have his daughter follow him to Amherst College, then go to NYU law school. She has graduated, has been a practicing attorney for one year now and is proud to say that she earns as much as her father. Yet, it will be another six years before she has enough experience to even qualify to take the examination to become an Administrative Law Judge.

Similar compensation disparities prevent the recruitment of qualified corporate associate general counsels, managing corporate attorneys, and non-supervisory corporate attorneys. And that is all included in our case study.

The need to recruit and maintain a qualified Federal administrative law judiciary is underscored by recommendation number 4 of the President's Commission on Executive, Legislative and Judicial Salaries, the Quadrennial Pay Commission, and recommendation number 5 of the Task Force on Pay Compensation of the National Commission on the Public Service, the Volcker Commission. The Quadrennial Pay Commission recommended that Administrative Law Judges' salaries be made comparable to the SES. The Volcker Commission's task force recommended that Congress reexamine compensation of special occupations in the General Schedule and cited Administrative Law Judges as an example.

To avoid a severe crisis of competence, a severe weakening of the administrative law judiciary, and a serious and a severe deterioration in the quality of adjudication in important Federal programs, effective steps must be taken to rectify these problems which inhibit the recruitment and retention of a talented administrative law judiciary.

I want to thank you for your consideration of our views. We would be pleased to answer any questions, and I believe Judge Birchman has a couple of brief comments on the case study.

STATEMENT OF JUDGE BRUCE L. BIRCHMAN

Judge Birchman. Just to provide the committee and the Congress with an example of the complex litigation experience and the responsibilities reflected by and example of an initial decision, I brought with me—and I will hold up for the committee—an initial decision reported at 58 F.P.C. 1127 (1977) issued in relationship to the Alaska Natural Gas Transportation Act of 1976, which was provided by the predecessor of the FERC, the Federal Power Commission, to the Congress in connection with its own report, reported at 58 F.P.C. 819 (1977) as required by the Alaska Natural Gas Transportation Act of 1976. The judge's initial decision, is 430 mimpo pages long with an additional 200 mimepo pages of appendixes, which as you can see, is as thick and as detailed as a volume of the Encyclopedia Britannica.

And if I might just reference the kind of record that the judge had to struggle with in his recommendations required by the Congress, let me just quote from page 9 of that decision. "The record consisted of 253 volumes of transcript embracing almost 45,000 pages, about 1,000 exhibits (some such as the environmental impact statements being almost 1,000 pages each) and innumerable items by reference."

I, myself, during my 10-year span at FERC have issued decisions similar in nature and magnitude as have other judges at the other 29 specialized regulatory agencies.

One other thing I would point out which reiterates the concerns which you have heard from the Article III judiciary—and we think they apply equally to us—is a recent expression by the business community that was found in the current issue of Forbes magazine of May 15, 1989. And I will simply read a brief excerpt from their

Mr. **Ford**. Is there a salary discrepancy between the chief judge and the corps judge?

Judge **Fier**. Yes, I believe there would be.

Mr. **Gilman**. Is there any House version of that bill, or is it just Senator Heflin's bill?

Judge **Fier**. No. I believe there is a House version. I'm not sure, but I believe there is.

Mr. **Gilman**. And, Judge Heifetz, you note that Magistrates and Bankruptcy Judges are paid at the rate of 92 percent of the salary of Federal district judges. Are you recommending a similar pay structure for ALJs?

Judge **Heifetz**. Well, it would seem to me, Congressman, that our salary has got to at least equal the level of the Senior Executive Service in order for us to attract anyone in the senior level of the government, and it has got to go to that level that would be equal to at least the Bankruptcy Judges and the Magistrates to allow us to attract some other candidates from the private sector.

Mr. **Gilman**. Well, again, do you recommend then a similar formula that we find for our Federal bankruptcy judges?

Judge **Heifetz**. I would.

Mr. **Gilman**. Apart from salary concerns, are there other ways that the Federal Government can enhance its recruiting efforts to try to attract more qualified Administrative Law Judges? Is there anything else that you would like to recommend to the committee?

Judge **Heifetz**. Well, I think that we would be prepared only to discuss the recruitment and retention right now as it affects salary levels at this point.

There are, as you pointed out, bills that have been pending before the Congress to enhance the status of Administrative Law Judges. Those presently pending bills have been the subject of internal disagreements among Administrative Law Judges as to whether they are appropriately accomplishing and best accomplishing the objectives for which those bills were designed.

At the present time, there is an effort among Administrative Law Judges to find a consensus so that we may be in a position to present to the Congress and, in a united effort, a proposal in conjunction with the efforts of the various committees who have been studying this problem. We would at that point perhaps have some more concrete proposals for the Congress to consider.

Mr. **Gilman**. It would be helpful if you got those recommendations to us before we consider the final proposal on Federal judicial salaries.

Judge **Heifetz**. We are working as fast as we can right now to try to draft some proposal that hopefully would be acceptable to a cross section.

Mr. **Gilman**. And what are your thoughts with regard to the corps bill that Judge Fier suggested, the Heflin bill?

Judge **Heifetz**. Our organization has taken a position against the particular bill. It is a bill which, as I said before, I think has a laudable objective in terms of enhancing independence and status. We don't believe that it will accomplish that objective in the best possible way, and we have detailed our objections to that bill before the appropriate committees.

We are now trying to work with our brethren who have in the past supported that bill to come up with a proposal that would be acceptable to both of us and would meet the aims of the legislation that has been proposed.

Mr. **Gilman**. Judge Fier, do you want to comment on that bill?

Judge **Fier**. Yes. I would like to add that historically the purpose of the corps concept came about because the Congress, as we know, is concerned with money and service to the public. The concept of a corps would involve providing judges who may have caseloads that may be heavy in one agency and not as heavy in other agencies. The corps bill would enable administrative law judges to bridge similar agencies and to straighten out some of the problems that arise from time to time due to heavy caseloads. This was demonstrated some years ago when Social Security became overloaded with its cases.

This has also arisen, as noted in my statement, a letter that we wrote when I was on the Executive Committee of the American Bar Association, *Conference of Administrative* Law Judges to the Attorney General, Mr. Civiletti. The administrative law judges offered to assist the Immigration and Naturalization Service at the time of the Iran crisis when there was some thought that there would be a heavy caseload involving national security questions with regard to Iranians living in the United States. This is included as part of my statement and the reply from the Attorney General also enclosed.

It is my belief that where we have the corps concept, it would provide a flexibility whereby all judges would be able to be utilized on a full-time basis rather than to have low caseloads for some judges while other judges are overloaded with cases. This, in effect, would result in a monetary saving to the government. I think this is the intent of our Congress to provide maximum service to the public.

Mr. **Gilman**. Well, I want to thank our panelists for taking the time to come to our hearing and to express yourselves.

We are going to be giving serious consideration to all aspects of judicial salaries in the near future, and we would welcome whatever further report your reivew group may want to submit to us.

We thank you, Judge Fier, for pointing out the disparity that exists between several of the categories of administrative law judges.

Mr. **Ford**. Thank you. The committee will adjourn until the next hearing which will be May 16.

[Whereupon, at 12:59 p.m., the committee was recessed, to reconvene Tuesday, May 16, 1989.]

[The following letter enclosing a "Case Study on Recruitment and Retention Concerns" was received for the record.]

THE FORUM

of United States Administrative Law Judges

P.O. Box 44337
Washington, D.C. 20026-4337

April 26, 1989

The Honorable William D. Ford
Committee on Post Office and
Civil Service
United States House of
Representatives
Washington, D.C. 20515

Dear Chairman Ford:

On behalf of the Forum of United States Administrative Law Judges (Forum), a professional organization which represents exclusively federal Administrative Law Judges classified at GS 16 and above, I am submitting our Case Study on Recruitment and Retention Concerns. Please make this letter and the Case Study a part of the record of the Committee's Hearings on the Recommendations of the National Commission on the Public Service. Forum also would appreciate the opportunity to testify in the ongoing hearings.

The Case Study demonstrates why the administrative law judiciary is less attractive than it once was and will become less effective in adjudicating important federal programs unless adequate measures, including adequate compensation, are initiated to enable recruitment and retention of a talented judiciary.

The United States Supreme Court has recognized that Administrative Law Judges are functionally comparable to Article III federal judges. Administrative Law Judges are often the critical linchpin in the effectiveness of major regulatory agencies.

Because of an anomaly in the existing pay statutes, the judges' General Schedule pay ceiling (Level V of the Executive Schedule) places them at a lower maximum rate than federal agency Associate General Counsels and General Counsels (Level IV of the Executive Schedule) who practice before them. These Associate General Counsels and General Counsels were under the General Schedule and had been paid at the same rate as Administrative Law Judges prior to the creation of the Senior Executive Service in 1978.

The Case Study discusses in detail why this anomaly has inhibited the recruitment of qualified and highly competent senior government attorneys as Administrative Law Judges. The

Case Study also demonstrates why recruitment in the private sector of qualified specialized attorneys has been inhibited. These developments must be reversed in order to ensure effective adjudication of essential federal programs.

The Case Study also demonstrates the need to retain senior experienced Administrative Law Judges. Approximately 40% of the senior specialized judges (120 of 300) are eligible for full retirement. Many of them are actively considering leaving the bench for significantly higher-paying positions.

This dual situation--the inability to recruit senior government attorneys and specialized attorneys in the private sector and the immediate retirement of a significant number of senior specialized judges--poses a threat to important segments of the national economy. For example, at the Federal Energy Regulatory Commission three of the 22 judge positions have been vacant for some time, the agency has been unable to recruit qualified candidates for these critical jobs, and more than half of the 22 judges can retire now. The departure of this number of experienced judges could have a crippling effect on an agency responsible for the orderly regulation of an important segment of the nation's economy.

Forum urges that the Committee consider and rectify these problems which inhibit the recruitment and retention of a talented administrative law judiciary.

Sincerely,

Alan W. Heifetz

Judge Alan W. Heifetz,
President
(202) 755-2540

THE FORUM
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ADMINISTRATIVE LAW JUDGES:

A Case Study of Recruitment and Retention Concerns

Presented to the House Committee
on Post Office and Civil Service
in Hearings on the Recommendations
of the National Commission on the
Public Service

April 26, 1989

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SUMMARY AND MAIN CONCLUSIONS

.GENERAL CONCERN

Highly qualified persons no longer can be attracted to the federal administrative law judiciary because of inadequate compensation. The failure to attract highly qualified persons to the federal administrative law judiciary will have long lasting adverse consequences. Today, over 130 judges (40%) in grades GS 16 or higher are eligible to retire. These judges are the cream of the crop. They handle some of the most complex administrative hearings. They were appointed when salary levels were high enough to attract highly qualified lawyers to the administrative law judiciary. Under present salary scales, these judges will be replaced by underqualified persons. Because Administrative Law Judges, in effect, are appointed for life, the appointment of underqualified persons will result in a severe loss of competence for many years in the administrative law judiciary and a severe deterioration in the quality of adjudication in important federal programs.

.RECRUITMENT CONCLUSION-PUBLIC SECTOR

The maximum base compensation of the Senior Executive Service (SES), exclusive of merit pay and performance bonuses, is at Level IV of the Executive Schedule--$80,775. Because of merit pay and bonuses, the pay of members of the SES in many cases far exceeds the Level V ceiling for Administrative Law Judges. Consequently, it is difficult to induce qualified senior government lawyers, most of whom are in the SES, to apply for specialized Administrative Law Judge positions

.RECRUITMENT CONCLUSION-ATTORNEYS IN LAW FIRMS

Attracting qualified attorneys from the private bar to the federal administrative judiciary is more difficult, if not impossible. The disparity in salaries between the private bar and federal Administrative Law Judges--salaries of partners, senior attorneys, and first-year attorneys--is even greater than the disparity between the judges' salaries and those of the SES. As a result, qualified specialized private practitioners rarely apply for Administrative Law Judge positions.

.RECRUITMENT CONCLUSION-CORPORATE ATTORNEYS

The current salary advantages of corporate Associate General Counsels, corporate General Counsels, managing corporate attorneys, and non-supervisory corporate attorneys is so much greater than the salaries of Administrative Law Judges that they can not be recruited.

RETENTION CONCLUSIONS

To avoid a severe crisis of competence, a severe weakening of the administrative law judiciary, and a serious and severe deterioration in the quality of adjudication in important federal programs, Administrative Law Judges' salaries must be substantially increased in order to retain the senior judges.

This statement is submitted on behalf of the Forum of United States Administrative Law Judges, which is a professional organization representing exclusively Administrative Law Judges (ALJs) classified at grades GS 16 and above.

APPOINTMENT AND RESPONSIBILITIES OF ADMINISTRATIVE LAW JUDGES

Administrative Law Judges are appointed under 5 U.S.C. 3105 of the Administrative Procedure Act. As discussed in greater detail in Appendix A, the United States Supreme Court has recognized that Administrative Law Judges are functionally comparable to Article III federal judges.

Administrative Law Judges preside over cases in more than thirty federal departments and agencies. Their cases involve such matters --- to name a few --- as labor relations, the prices of interstate natural gas and electricity, postal rates and mail classifications, mine and consumer health and safety, the environment, communications, immigration, commodity futures trading, airline mergers, violations of the antitrust and securities laws, discrimination in housing, and the granting of social security and other benefits. Often, their cases involve billions of dollars and important matters of national policy, such as the location and financing of the Alaska natural gas pipeline.

Unlike most other judges who are either elected or appointed to office, federal Administrative Law Judges are selected on the basis of merit after a rigorous written and oral examination by the Office of Personnel Management.

As seen from Appendix B, there are over three hundred judges at the specialized regulatory agencies. These senior judges are at grades GS 16 and above and most of them are at the Level V salary "cap", $75,500. (The remaining 733 judges are at grade GS 15, and most are Social Security judges.)

VOLCKER COMMISSION RECOMMENDATIONS

The President's Commission on the National Service--the Volcker Commission--in its recent report entitled Leadership In America--Rebuilding the Public Service discussed the reasons why the public service is neither as attractive as it once was nor as effective in meeting perceived needs. It provided numerous examples of government's inability to recruit and retain a talented work force and concluded that if these trends continued, America would soon be left with a government of the mediocre, locked into careers of last resort or waiting for a chance to move on to other jobs. Report at 2-4.

To restore the leadership, talent, and performance essential to the strong public service the future demands, the Commission set forth twelve goals, including Goal 9 (that the President work with Congress to give high priority to restoring the depleted purchasing power of executive,judicial, and legislative salaries by the beginning of a new Congress in 1991, starting with an immediate increase of 25 percent); Goal 10 (that the Congress promptly act upon needed pay raises for judges and top level executives); and Goal 11 (that the President and Congress should give a higher budget priority to civil service pay in the General Schedule Pay System). With regard to Goal 11 and pay in the General Schedule, the Commission further observed that to fill key civil service jobs with qualified employees, federal salaries must stay at or at least close to average levels of pay offered by other employers. Report at 37.

The Volcker Commission established several Task Forces to highlight discrete problems bearing on the recruitment and retention of an effective civil service. The Task Force on Pay and Compensation, by a report entitled Facing The Federal Compensation Crisis issued on April 25, 1989, in Recommendation #4, took cognizance of concerns unique to federal Administrative Law Judges. Recommendation #4 recognized the need to reflect appropriate pay level distinctions within the SES and among special occupations associated with the SES or with supergrade positions, citing Administrative Law Judges as an example of this critical need. Task Force Report at 202.

The Forum of United States Administrative Law Judges (Forum) submitted a Case Study to the Volcker Commission similar to this Case Study. The discussion that follows emphasizes why the administrative law judiciary is neither as attractive as it once was and will become less effective in meeting perceived needs in important federal programs unless adequate measures, including adequate compensation, are initiated to recruit and retain a talented judiciary.

QUADRENNIAL PAY COMMISSION RECOMMENDATIONS

Bearing upon the Volcker Commission's concern and recommendations to revitalize the federal civil service particularly with regard to recruitment and retention and the need to ensure an effective administrative judiciary are several identical concerns highlighted by the President's Commission on Executive, Legislative and Judicial Salaries--the Quadrennial Pay Commission.

Forum also submitted a Case Study similar to this one to the Quadrennial Pay Commission. In its recent report entitled Fairness For Our Public Servants, the Quadrennial Pay Commission,like the Volcker Commission's Task Force on Pay and

Compensation, also recognized the serious inequity in Administrative Law Judges' current compensation and the need to facilitate recruitment of better qualified candidates as Administrative Law Judges.

Recommendation #5 of the Quadrennial Pay Commission's report at page 3 under "Summary of Major Recommendations" requests legislation to raise the maximum salary level for Administrative Law Judges to that of members of the SES.

Of equal importance, at page 21 of this report, the Quadrennial Pay Commission also recognized the severe problems associated with compression of Administrative Law Judges' salaries. The Quadrennial Pay Commission stated that administrative judiciary personnel such as Administrative Law Judges were particularly subjected to compression in the General Schedule. The Quadrennial Pay Commission noted that these "positions lie primarily in the supergrades of the General Schedule, and that salary compression has made it difficult to recruit candidates for the administrative judicial vacancies from among members of the Senior Executive Service and officials of the General Service."

President Reagan adopted the recommendations of the Quadrennial Pay Commission. Had those recommendations been implemented, Administrative Law Judge salaries would have been placed on a parity with the SES and increased to $120,000. At the least, this would have restored to the administrative law judiciary the ability to recruit Associate General Counsels and General Counsels in the SES.

I. RECRUITMENT CONCERNS

Until 1978, the federal government was able to attract well-qualified candidates to the federal administrative law judiciary from the ranks of senior government attorneys and from the private bar. Today, the federal administrative law judiciary no longer attracts senior government attorneys to senior judge positions in the specialized regulatory agencies. Nor, does the federal government attract attorneys with specialized expertise to senior judge positions in the specialized regulatory agencies.

The reason is simple. The pay is too low.

DIFFICULTIES IN RECRUITMENT FROM THE SES

In-government recruitment was exacerbated when Congress created the Senior Executive Service (SES) in 1978. At that time most of the senior civil service employees in the Executive Branch, including Administrative Law Judges, held supergrade positions (grades GS 16, GS 17, and GS 18) in the civil service

General Schedule. The salaries in the supergrade positions could not then and do not now exceed the salary of Executive Level V.

When the SES was created, the supergrade Assistant and Associate General Counsels, who were at grades GS 15 and GS 16, joined the SES. Their compensation was increased to and limited by Executive Level IV which was higher than the Executive Level V cap or ceiling.

In addition, unlike the supergrade positions that are capped by Executive Level V, members of the SES were entitled to merit pay and incentive performance bonuses. Administrative Law Judges, however, were not permitted by Congress to join the SES where they would have been eligible for merit pay and bonuses. Congress took this sound step to insulate the judges from political pressures and to preserve the judges' decisional independence and ensure the fairness of the adjudicative process in the federal agencies.

Members of the Senior Executive Service receive greater starting base compensation than GS 16 Administrative Law Judges. The President's Commission report, in this respect, noted that "agencies may provide substantial pay increases to grade 15 employees at any step--to induce them to join the SES." 1/

Executive Level IV now at $80,775 is the ceiling for compensation of members of the Senior Executive Service. The ceiling for Administrative Law Judges compensation is Executive Level V, now at $75,500.

Members of the Senior Executive Service also receive greater total compensation than Administrative Law Judges because they are eligible for annual merit pay ($20,000 Distinguished Rank and $10,000 Meritorious Rank awards) and annual performance bonuses up to $15,500. Performance bonuses in FY 1987 averaged 8.1% of base pay. On the other hand, the Administrative Procedure Act and civil service regulations prohibit the payment of merit pay and performance bonuses to Administrative Law Judges because such compensation would give rise not only to the appearance of impropriety but result in an infringement of decisional independence.

Members of the Senior Executive Service also can accrue unlimited amounts of annual leave and upon retirement receive lump sum compensation for all unused and accrued annual leave based upon the individual's current rate of pay. Administrative

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1/ The Report of the President's Commission on Compensation of Career Federal Executives, February 26, 1988 (President's Commission Report) at 23.

Law Judges are not permitted unrestricted accrual of annual leave. Under 5 U.S.C. 6304, Administrative Law Judges can only annually accrue 30 days of leave and, upon retirement, receive lump-sum compensation for a maximum of 30 days of accrued annual leave.

It comes as no surprise, then, that it is increasingly difficult, if not impossible to induce senior government lawyers, most of whom already are in the Senior Executive Service, to apply for Administrative Law Judge positions.

The disparity in salary levels between the two groups of senior career Government lawyers--Administrative Law Judges and Senior Executive Service senior attorneys--discourages qualified attorneys from seeking to become Administrative Law Judges and will weaken the quality of the administrative law judiciary.

OTHER PUBLIC SECTOR CONCERNS

Administrative Law Judges' compensation lags considerably behind not only the SES, but also other senior federal employees and lower level federal judges. Salaries of senior Congressional staffers were raised in 1988 to $86,815 for the Senate and $82,500 for the House. Salaries of Bankruptcy Judges and Magistrates in 1988 were increased from the then $72,500 Executive Level V "cap" to 92% of Article III judges pay or $81,880. Administrative Law Judges at GS 16 and above (13 Chief Administrative Law Judges are at grade GS 17 and 1 is at grade GS 18) are capped at $75,500, yet have responsibilities and tenure which are greater in nature than those of the federal Magistrates and Bankruptcy Judges.

LAW FIRM RECRUITMENT DIFFICULTIES

Attracting qualified attorneys from the private bar to the federal administrative judiciary is more difficult, if not impossible. The disparity in salaries between the private bar and federal administrative law judges--salaries of partners, senior attorneys, and first-year attorneys--is even greater than the disparity between the judges' salaries and those of the SES, so that qualified specialized private practitioners rarely apply for Administrative Law Judge positions.

EXAMPLE: ALJ SALARIES VERSUS SALARIES OF LAW FIRM PARTNERS

The American Bar Association has concluded that it is appropriate to compare judicial salaries with the salaries of partners in law firms. In A Handbook on State Judicial Salaries, American Bar Association, June 1986, page 7, the ABA states,

***Since judges are expected to possess above-average

RECRUITMENT CONCLUSION-LAW FIRMS

These disparities between ALJ compensation and the compensation of partners in law firms, senior attorneys in law firms, and first-year attorneys in law firms militate against their recruitment as Administrative Law Judges.

These disparities confirm the observation of the Volcker Commission's Task Force on Pay and Compensation that "The federal government is losing its competitive position in the hiring of highly qualified men and women for its white-collar workforce, known as the General Schedule." Task Force Report at 228.

CORPORATE ATTORNEY RECRUITMENT DIFFICULTIES

EXAMPLE: CORPORATE GENERAL COUNSELS AND ASSOCIATE GENERAL COUNSELS

Appendix C, Table 6, demonstrates the range of average income of corporate Associate General Counsels in 1987, $73,000 to $145,000, and of General Counsels, $125,000 to $190,000, compared with the Executive Level V salary cap of $70,800 in 1987, $72,500 in 1988, and $75,500 in 1989.

EXAMPLE: MANAGING CORPORATE ATTORNEYS

Appendix C, Table 8, shows that managing corporate attorneys had median compensation in 1986 of $92,805, an average salary of $85,730, and total compensation of $96,309, all well above the 1988 Executive Level V salary cap of $70,800 in 1986, $72,500 in 1987, and $75,500 in 1989.

EXAMPLE: NON-SUPERVISORY CORPORATE ATTORNEYS

Appendix C, Table 8, also shows that non-supervisory corporate attorneys had median compensation in 1986 of $57,309, an average salary of $57,419, and total compensation of $60,882, all well above the first 3 to 4 steps of 1988 pay for Government attorneys at GS 15 ($54,907 to $60,397).

In marked contrast to the above salaries of corporate General Counsels and Associate General Counsels, corporate managing attorneys, and corporate non-supervisory attorneys, Appendix C, Table 7, prepared by the Bureau of Labor Statistics of the U.S. Department of Labor, shows a $105,500 average 1987 salary for attorneys in private industry compared with 1987 GS 15 attorney salaries of $53,830 to $69,976. (GS 16 judges were capped at $70,800 in 1987, $72,500 in 1988, and are capped at $75,500 in 1989.)

RECRUITMENT CONCLUSION-CORPORATE ATTORNEYS

The current salary advantages of corporate Associate General Counsels, corporate General Counsels, managing corporate attorneys, and non-supervisory corporate attorneys is so much greater than the salaries of Administrative Law Judges that they can not be recruited as Administrative Law Judges.

UNDERQUALIFICATION OF CANDIDATES FOR ALJ POSITIONS

The typical private practice candidate for Administrative Law Judge is a solo practitioner whose income level is well below that for partners and corporate line attorneys shown in the attached Tables to Appendix C. The data from Appendix C that were discussed above shows why this is so.

The typical government attorney candidate for Administrative Law Judge is a lower level (GS 13 or 14) attorney rather than the supergrade Associate or General Counsels who, prior to the enactment in 1978 of the Civil Service Reform Act and the creation of the SES, were classified at GS 16 and above and were a significant source of applicants for Administrative Law Judges.

SUMMARY OF RECRUITMENT DIFFICULTIES

The failure to attract highly qualified persons to the federal administrative law judiciary will have long lasting adverse consequences. Today, over 130 judges (40%) in grades GS 16 or higher are eligible to retire. These judges are the cream of the crop. They handle some of the most complex administrative hearings. They were appointed when salary levels were high enough to attract highly qualified lawyers to the administrative law judiciary. Under present salary scales, these judges will be replaced by underqualified persons. Because Administrative Law Judges, in effect, are appointed for life, the appointment of underqualified persons will result in a severe loss of competence for many years in the administrative law judiciary and a severe deterioration in the quality of adjudication of many important federal programs.

Given the greater compensation of Associate General Counsels and General Counsels in the SES and of attorneys in the private sector compared with the considerably less compensation of the administrative law judiciary, it should come as no surprise that candidates for ALJ positions are far less qualified than their predecessors.

Greater compensation is necessary to attract more qualified attorneys from the SES as well as the private sector.

II. RETENTION CONCERNS

The problem of attracting competent and well qualified attorneys to the administrative law judiciary is compounded by the great numbers of Administrative Law Judges who may be expected to retire in the next few years, particularly if compensation remains inadequate.

Appendix D shows that in 1988 approximately 40% of the GS 16 Administrative Law Judges were eligible for full or regular retirement, having attained age 55 with 30 or more years of federal service.

Appendix D also shows that in 1988 more than 28% of the GS 16 Administrative Law Judges were eligible for early retirement, having attained age 50 with 20 to 25 years of service.

Administrative Law Judge compensation is not immune to the effects of inflation. The Volcker Commission's Task Force on Pay and Compensation found that the value of federal compensation decreased more than 35 percent from 1969 to 1988, while private sector executives enjoyed substantial increases in purchasing power and compensation that was higher than federal compensation to begin with. Task Force Report at 206, 222. This erosion in purchasing power and compensation can be expected to impact negatively on Administrative Law Judge compensation which has not kept pace with the compensation of the SES and of attorneys in the private sector, and, in turn, the ability to retain the senior experienced Administrative Law Judges.

Similar conclusions with regard to the erosion of Administrative Law Judges' purchasing power and the need to attract qualified attorneys as well as retain the senior experienced judges were recently expressed by the Quadrennial Pay Commission.

SUMMARY OF RETENTION CONCERNS

Administrative Law Judge salary compression, the continued erosion of their purchasing power, the far less compensation they receive in relationship to other lawyers in the public and private sectors militate against retention of the senior experienced Administrative Law Judges. When these senior judges retire, there will be a great influx of underqualified persons to the administrative law judiciary.

To avoid a heavy loss of senior Administrative Law Judges, a severe crisis of competence, a severe weakening of the administrative law judiciary, and a serious and severe deterioration in the quality of adjudication in important federal programs, Administrative Law Judges' salaries must be substantially increased.

APPENDIX[1]

A.

The APA and Judicial Decisional Independence and Impartiality

Administrative Law Judges represented by our Conference conduct hearings and issue decisions in agency adjudications or rulemakings which touch the daily lives of all citizens and affect the national and world economy. Matters encompassed in these on-the-record proceedings include the adjudication of social security, old age, retirement, and disability benefits; international trade; rail mergers; licenses for broadcasting and for hydro-electric utility and natural gas pipeline facilities and operation; rates for postal, energy, and communication services; compliance with federal standards relative to the sale of securities, commodities and futures, trade, labor management relations, food and drugs, housing, banking, advertising, corporate mergers, health and safety in mining, transportation, and other industries; mining or forestry on public lands; voters' rights; school desegregation; equal employment; and protection of the environment, to name but a few.

The Supreme Court found in Butz v. Economou, 438 U.S. 478, 513-14 (1978), that Administrative Law Judges are functionally comparable in their duties and responsibilities to Article III federal judges. In reaching this conclusion the Court reviewed the circumstances which led Congress to enact the Administrative Procedure Act (APA) in 1946.

Prior to the APA there was considerable concern that persons hearing administrative cases at the trial level could not exercise independent judgment. Hearing officers at that time were required to perform prosecutorial and investigative functions as well as their judicial work. They also were subordinate often to executive officials within the agency.

The securing of fair and competent hearing personnel also was viewed as the heart of formal administrative adjudication according to the Final Report of the Attorney General's Committee on Administrative Procedure, 46 (1941).

To remedy these matters, Congress created a corps of Administrative Law Judges, and designed a bill of rights for administrative procedure by the enactment of the APA in 1946.

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[1] Federal Reduction in Force Procedures: Hearings Before the (Footnote Continued)

The APA invested federal Administrative Law Judges with special status and stature unlike any other federal employee.

Under the APA, Administrative Law Judges may not perform duties inconsistent with their duties as Administrative Law Judges. 5 U.S.C. 3105. When conducting a hearing under § 556 of the APA, an Administrative Law Judge is not responsible to, or subject to the supervision or direction of employees or agents engaged in the performance of investigative or prosecution functions for the agency. 5 U.S.C. § 554(d)(2). Nor may an Administrative Law Judge consult any person or party, including other agency officials, concerning a fact at issue in the hearing unless on notice and opportunity for all parties to participate. 5 U.S.C. § 554(d)(1). Administrative Law Judges must be assigned to cases in mechanical rotation so far as is practicable. 5 U.S.C. § 3105. They may be removed only for good cause established and determined by the Merit Systems Protection Board after a hearing on the record. 5 U.S.C. § 7521(b)(1).[2]

The pay of federal Administrative Law Judges is controlled by the Office of Personnel Management. Administrative Law Judges are excluded by the APA from agency performance rating appraisals. 5 U.S.C. 4301(2)(D). OPM regulations also expressly provide "that an agency shall not rate the performance of an Administrative Law Judge." 5 CFR 930.211. In this respect, Administrative Law Judges are unlike members of the SES who receive bonuses in addition to merit pay and whose performance is rated by the employing agency. Administrative Law Judges are not subject to performance appraisals and can not receive bonuses because this would affect their decisional independence and integrity which is preserved by the APA.

In Ramspeck v. Federal Trial Examiners Conference, 345 U.S. 128 (1953), the Supreme Court stated that Congress enacted the APA to provide tenure for Administrative Law Judges as a special class of semi-independent hearing officers by vesting control of their compensation, promotion, and tenure in the Civil Service Commission [now the Office of Personnel Management] to a much greater extent than in the case of other federal employees. The Court further stated that one of the primary purposes of the APA

(Footnote Continued)
Subcommittee on Human Resources, 99th Cong., 1st. Sess., 84-88 (1985). **(Testimony of Judge Bruce L. Birchman)**

[2] All other federal employees can be removed prior to hearing and must pursue their hearing rights after their employment ceases. 5 U.S.C. § 7513.

was to establish qualified impartial hearing examiners who would not be mere "rubber stamps" for the prosecuting arm of the agencies.

The merit selection appointment process for an Administrative Law Judge also ensures attainment of the APA goals of judicial decisional independence, integrity, and impartiality. A rigorous competitive examination is administered by OPM. A demonstration of at least seven years of administrative law experience or equivalent litigation experience is required. A written examination is required to demonstrate ability to issue a well reasoned decision. An oral examination before a three member panel which includes a representative of the American Bar Association and a presiding Administrative Law Judge are further steps in this complex competitive process.

In N.L.R.B. v. Permanent Label Corporation, 657 F.2d 512, 527-28, concurring opinion, Judge Aldisert concluded that "the selection process for Administrative Law Judges should inspire respect for this office than is generally extended by Article III judges. It is a process that requires rigorous inquiries into the background and competence of the candidates."

B.

TOTAL NUMBER OF ALJS ON BOARD BY GRADE AND AGENCY
as of April 21, 1989

Breakdown by grade:

GS-15: 711
GS-16: 314
GS-17: 12
GS-18: 3
1,038

Breakdown by agency:[a]

	GS-15	GS-16	GS-17	GS-18
Agriculture Department		4	1	
Commerce Department	1	1		
Commodity Futures Trading Commission		4		
Education Department		2		
Environmental Protection Agency		6	1	
Federal Communications Commission		9	1	
Federal Energy Regulatory Commission		20		1
Federal Labor Relations Authority		8	1	
Federal Maritime Commission		3		
Federal Mine Safety and Health Review Commission		8	1	
Federal Trade Commission		3		
Health and Human Services Department				
Food and Drug Administration		1		
Departmental Grant Appeals Board	1			
Social Security Administration	700			1
Housing and Urban Development Department		3		
Interior Department		6	1	
Interstate Commerce Commission		3		
Justice Department				
Drug Enforcement Administration		2		
Immigration Review		3		
Labor Department		100	1	1
Merit Systems Protection Board		1		
National Labor Relations Board		89	1	
National Transportation Safety Board		5		
Nuclear Regulatory Commission		2		
Occupational Safety and Health Review Commission		17	1	
Securities and Exchange Commission		3	1	
Transportation Department				
Office of the Secretary		3	1	
U.S. Coast Guard	9	1		
U.S. International Trade Commission		3	1	
U.S. Postal Service		2		
	711	312	12	3

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[a] Agency identification reflects permanent assignments, and omits loans, reemployed ALJs, and unoccupied slots.

Source: U.S. Office of Personnel Management

C.

Table 1

Law Practice Incomes of Partners According to Population

Size of City	Median Income	Average Income
250,000 to 999,999	$ 87,500	$ 154,000
Over 1,000,000	148,500	171,700

Note: According to the American Bar Association, many judges serve in populous areas, many are selected from the larger law firms, and the only way to attract and retain these judges is for their judicial salaries to be comparable to what could be earned in private practice. (ABA Handbook on State Judicial Salaries, June 1986)(April 1985 survey)

Table 2

Law Practice Incomes of Partners According to Size of Law Firm

Size of Law Firm	Median Income	Average Income
3-10	$ 64,600	$ 102,200
11 or more	129,200	162,400

(Source: ABA Handbook on State Judicial Salaries, June 1986) (April 1985 survey)

Table 3

1988 Average Starting Attorney Salaries [1]

	1988
Atlanta	$52,500
Boston	54,125
Chicago	62,618
Ft Worth/ Dallas	56,833
Houston	56,000
Los Angeles	60,923
New York City	72,842
Philadelphia	57,993
San Francisco	53,909
Washington, DC	59,000

NOTE: $72,500 WAS THE MAXIMUM SALARY FOR AN ALJ FROM 1/87 TO DATE WHO, ON AVERAGE, HAD MORE THAN 20 YEARS OF SPECIALIZED LAW EXPERIENCE.

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[1] The National Law Journal, The Nation's Largest 250 Law Firms, September 26, 1988.

Table 4

	Law Partners Incomes -1985 1/		1988 Starting Attorney Salaries 2/
	Average Income Of Partners In Law Firms (Non-Patent)	Highest Income Of Partners in Law Firms (Non-Patent)	
Atlanta	$130,000	$250,000	$51,300
Boston	110,000	135,000	53,200
Chicago	140,000	270,000	57,600
Cinncinnati /Dayton	195,000	300,000	
Cleveland	165,000	290,000	
Dallas/Ft Worth	180,000	260,000	51,100
Denver	110,000	190,000	
Detroit	100,000	135,000	
Houston	200,000	350,000	50,000
Kansas City/ St Louis	155,000	280,000	
Los Angeles	145,000	210,000	52,700
Milwaukee	99,000	200,000	
Minneapolis/ St Paul	130,000	210,000	
New York City	220,000	390,000	65,600
Philadelphia	195,000	300,000	52,400
Pittsburgh	130,000	225,000	
San Francisco	87,000	250,000	50,000
Washington DC	190,000	250,000	57,600

Note: $72,500 WAS THE MAXIMUM SALARY FOR AN ALJ FOR 1987-TO DATE

1/The Student Lawyer, American Bar Association,November 1985

2/The National Law Journal, Tenth Annual Survey of the Nations Largest Law Firms, September 28, 1987

TABLE 5

Law Partners Incomes 1/

Average Income of Partners (Non-Patent) In Law Firms

City	1986	1987	Change % 2/
Atlanta	135,000	145,000	+ 7%
Boston	125,000	150,000	20%
Chicago	150,000	165,000	10%
Cincinnati/ Dayton	180,000	183,000	2%
Cleveland	160,000	165,000	14%
Dallas/ Ft Worth	170,000	180,000	6%
Denver	125,000	135,000	8%
Detroit	110,000	130,000	18%
Houston	210,000	215,000	2%
Kansas City/ St Louis	160,000	167,000	4%
Los Angeles	150,000	179,000	19%
Milwaukee	100,000	170,000	70%
Minneapolis/ St Paul	129,000	130,000	1%
New York City	240,000	265,000	10%
Philadelphia	190,000	210,000	11%
Pittsburgh	125,000	140,000	12%
San Francisco	92,000	110,000	20%
Washington, DC	175,000	180,000	3%

1/ The 1987 Annual Attorney Salary Survey, David J. White & Associates, Inc. The survey results were compiled from questionnaires sent to over 8,000 law firms and are based on data collected from March to May 1987. In every instance the lowest range of partner income (the survey includes high, low, and average ranges of income) exceeded the $72,500 maximum salary for Administrative Law Judges fixed by Congress in February 1987.

2/$72,500, the maximum salary for an ALJ for 1987-to date, increased 2% over the 1986 maximum salary of $70,800.

TABLE 5A

1987 Law Firm Salaries 1/

City	8 years	Partner
Atlanta	$69,500	$145,000
Boston	$69,000	$150,000
Chicago	$60,000	$165,000
Cincinnatti/ Dayton	$59,000	$183,000
Cleveland	$65,000	$165,000
Dallas/Ft. Worth	$70,000	$180,000
Denver	$65,000	$135,000
Detroit	$65,000	$130,000
District of Columbia	$73,000	$180,000
Houston	$70,000	$215,000
Kansas City/ St. Louis	$59,500	$167,000
Los Angeles	$70,000	$179,000
Milwaukee	$64,500	$170,000
Minneapolis/St. Paul	$55,000	$130,000
New York City	$78,000	$265,000
Philadelphia	$60,000	$210,000
Pittsburgh	$64,000	$140,000
San Francisco	$62,000	$110,000

1/ The 1987 Annual Attorney Survey, David J. White & Associates, Inc. In every instance the lowest range of partner income (the survey includes high, low, and averge ranges of income) exceeded the $72,500 maximum salary for Administrative Law Judges fixed by Congress in February 1987.

TABLE 6

Corporate Associate General Counsels and General Counsels Average Income - 1987 1/

City	Assoc. G.C.	Change % 1987 over 1986	G.C.	Change % 1987 over 1986
Atlanta	$100,000	+ 1%	$135,000	+ 4%
Boston	73,000	7%	125,000	32%
Chicago	145,000	50%	190,000	38%
Cincinnati/ Dayton	78,000	11%	135,000	11%
Cleveland	105,000	5%	175,000	13%
Dallas/ Ft Worth	110,000	16%	170,000	10%
Denver	90,000	20%	125,000	4%
Detroit	89,000	11%	145,000	12%
Houston	97,000	2%	172,000	2%
Kansas City/ St. Louis	78,000	9%	140,000	

1/ The 1987 Annual Attorney Salary Survey, David J. White & Associates, Inc.

TABLE 8

All Corporate Employers 1/

	1986 Median Compensation	1986 Average Salary	1986 Total Compensation
Managing Attorney	$92,085	$85,730	$96,309
Non-supervisory Attorney	$57,309	$57,419	$60,882

1/ Altman & Weil, Inc., The Guide to Lawyers Compensation, the 1987 (October 1986) Survey of Law Department Salaries, pps. 1, 2, and 6.

D.

Office of Administrative Law Judges
Career Entry Group
U.S. Office of Personnel Management
Washington, DC 20415

February 1988

ALJ Retirement Eligibility by Agency as of September 30, 1987

Agency	Number Eligible for 50/20-25 Early Retirement	Number Eligible for 55/30-60/20-62/5 Regular Retirement	Number not Eligible for Early or Regular Retirement	Total Number ALJs
Agriculture	4 (80%)	1 (20%)	0	5
FLRA	3 (37.5%)	5 (62.5%)	0	8
MSPB	0	1 (100%)	0	1
Commerce	1 (50%)	1 (50%)	0	2
CFTC	4 (80%)	1 (20%)	0	5
Justice	1 (33.3%)	0	2 (66.7%)	3
Labor	16 (16.3%)	39 (39.8%)	43 (43.9%)	98
FERC	8 (34.8%)	10 (43.5%)	5 (21.7%)	23
EPA	2 (33.3%)	4 (66.7%)	0	6
FCC	3 (30.0%)	4 (40.0%)	3 (30.0%)	10
FTC	2 (40.0%)	3 (60.0%)	0	5
HUD	0	0	1 (100%)	1
ICC	0	3 (100%)	0	3
(1) Interior	4 (26.7%)	6 (40.0%)	5 (33.3%)	15
Maritime	1 (33.3%)	2 (66.7%)	0	3
NLRB	28 (30.8%)	26 (28.6%)	37 (40.7%)	91
NRC	2 (100%)	0	0	2
OSHRC	5 (29.4%)	11 (64.7%)	1 (5.9%)	17
FMSHRC	2 (20.0%)	3 (30.0%)	5 (50.0%)	10
SEC	0	4 (100%)	0	4
NTSB	3 (60.0%)	2 (30.0%)	0	5
ITC	1 (25.0%)	2 (50.0%)	1	4
Transportation	1 (25.0%)	1 (25.0%)	2	4
Sub Total GS-16 Agencies	91 (28.0%)	129 (39.7%)	105 (32.3%)	325
(2) HHS	75 (11.5%)	252 (38.5%)	328 (50.1%)	655
(3) Coast Guard	2 (20.0%)	7 (70.0%)	1 (10.0%)	10
Sub Total GS-15 Agencies	77 (11.6%)	259 (38.9%)	329 (49.5%)	665
Total All ALJ Agencies	168 (17.0%)	388 (39.2%)	434 (43.8%)	990

(1) Erroneously includes 9 Indian Probate Judges below GS-16.
(2) Includes 1 GS-16 SSA Chief and 1 GS-16 FDA ALJ.
(3) Includes 1 GS-16 Chief ALJ.

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

TUESDAY, MAY 16, 1989

House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC.

The committee met, pursuant to notice, at 10:04 a.m., in room 311, Cannon House Office Building, Hon. William D. Ford (chairman of the committee) presiding.

Mr. **Ford**. I would like to welcome you to another hearing on the recommendations of the National Commission on the Public Service.

Today's hearings will focus on two agencies, which, each in its own unique way, have a major impact on the quality of our lives. The National Science Foundation leads the national effort in initiating and supporting high quality research in all the scientific and engineering disciplines, and promoting the development of research talent by supporting educational programs.

It is because of the promotional and supportive efforts of the Foundation that research institutions, businesses and government, have done so much in improving the quality of life for our citizens. We cannot and we should not allow this vital entity to flounder because of a collective short-sightedness of the public at large on the question of commensurate pay for high level federal officials.

I think I am safe in saying that the United States Postal Service, who we will hear from this morning, has a greater continuous impact on the public and the public relies upon the service more than any other single governmental institution.

We depend on the daily mails for timely delivery of our pay and pension checks, payments on our mortgages and rents; business and personal correspondence. It goes without saying that whether it is business or personal, most of us expect the postal service to handle all our mail quickly and efficiently.

In the previous hearing I mentioned the seeming phenomenon where the same people who complain about "those people running the Post Office" have nothing but kind words about their individual letter carrier.

As the committee with oversight of the United States Postal Service, we know firsthand how good management translates into a satisfied postal customer. It remains to be seen how long the good managers will remain with the service under the prevailing pay CAP within which they must operate.

The Chair will have placed in the record at this point the opening statement of Congressman Frank M. Horton.

[The statement follows:]

OPENING STATEMENT OF THE HONORABLE FRANK HORTON

Mr. Chairman, thank you and I want to again commend you for holding this series of hearings on the recommendations of the Volcker Commission. I join you in welcoming the Postmaster General of the United States, my good friend Tony Frank, and I also welcome our other witness from the National Science Foundation, Erich Bloch.

One of the goals of the Commission is to bring to the public's attention the "quiet crisis" faced in public service. These hearings and the report of the Volcker Commission have helped convince people that all the bureaucrat bashing of recent years in a useless, Destructive exercise. I am optimistic that all committee members can work together with the administration to put together a legislative proposal that utilizes the data and findings of the Commission. I find it extremely encouraging that for the first time in 12 years we have a President who did not come to Washington maligning the Federal work force. With a career in public service, the President certainly understand a the importance of an efficient, effective civil service. With President Bush we have a great opportunity to breath some new life into the issues surrounding the civil service. The President understands that the performance of civil servants has a direct influence on the success of the policies and programs he advocates.

Close examination of the recommendations of the Commission and recent testimony have led me to believe that in addition to bureacrat bashing and inequitable pay, we have other problems worthy of attention. The public's perception of Government's lack of efficiency is cause for concern. Back in the 1930's and 1940's the public viewed the Government as an important, positive factor in their lives. Since the Depression and World War II, the attitude has changed as Government has grown. As Government expanded and tried to do so much more, it had more problems accomplishing its mission, and in turn public perception has declined. We also must focus more on the recruitment of new employees. If we are trying to attract the best and the brightest, we need to go out there and let them know they can have a successful and rewarding career working for the Federal Government.

In addition, we need to provide our professional managers with more flexibility in hiring, firing, and the promotion of their subordinates. I am also concerned about the quality and extent to which the Government is focusing on training and education. Fully trained competent professionals are crucial to the success of the Federal work force.

We have a long road ahead. Our mission is to reestablish the Government as a place where employees can enjoy coming to work and where the development, analysis, and implementation of policy that affects the lives of all Americans can be accomplished efficently and effectively.

I recognize that there is no simple solution, but these hearings and the work of the Volcker Commission will help start us on the job ahead. I am interested in hearing from our witnesses on their own specific experiences in their own agencies and look forward to working with both of you to ensure the high quality of Government service. Thank you.

Mr. **FORD**. At this time I welcome Mr. Erich Bloch, Director of the National Science Foundation. You may proceed, Mr. Bloch, to supplement, highlight, or in any other way summarize your statement.

STATEMENT OF ERICH BLOCH, DIRECTOR, NATIONAL SCIENCE FOUNDATION

Mr. **BLOCH**. Thank you, Mr. Chairman. I appreciate the opportunity to comment on the recommendations of the National Commission of the Public Service, and I will summarize my written statement as quickly as I can.

The Volcker Commission has properly focused attention on the recruitment, retention, motivation, and recognition of federal employees. I endorse this report and urge the Congress to give it full consideration.

Today I want to address the impact of federal pay policies on recruitment and retention of federal scientists and engineers, focusing on my experience at the National Science Foundation.

NSF is a small agency, about 1,200 people, of whom over 400 are scientists and engineers. About a third of these are on leave of absence from their home institutions in academia, other government agencies and infrequently, from industrial firms.

Because we support science and engineering of the most advanced kind, it is important that our professional staff be accomplished researchers and teachers and educators who are respected by other researchers and teachers and educators in academia and in industry.

It has become increasingly difficult, however, to pay enough to attract and keep this caliber of individual. The most we are able to offer an executive scientist or engineer is $80,700 and $75,500 for senior program directors. Recent studies show that salaries for full professors at major private research universities now average, and I underline the word average, $90,000 to $100,000 in the natural sciences and engineering; public universities are not far behind at $75,000 to $90,000. Industry obviously pays even more.

It is difficult to ask prospective science executives and program directors both to forego their research and to take a pay cut to come to NSF.

NSF managers consistently say that increasing salary differentials between academia and government are making recruiting more difficult. As examples, the divisions of chemistry and materials research operated with acting division directors for 7 and 12 months respectively. The previous incumbents of those positions, both long-term government employees and NSF employees, moved to senior administrative positions at universities with salaries well in access of $100,000 a year versus their salaries of about $75,000 at NSF.

The Assistant Director for Mathematical and Physical Sciences, an executive position reporting directly to me, has recently become executive officer of the AAAS at a salary more than 50 percent above the top government pay.

Differences in cost of living further complicate recruitment for the foundation because of the high cost of living in Washington DC.

The government urgently needs to reexamine its salary structure and policy.

What steps must be taken to enhance our ability to recruit senior scientists and engineers? Let me propose some, divided into two categories. First, there are three actions that I consider mandatory. The first one is pay market-based salaries. Government employees should earn salaries comparable to those in the academic and private sector. They have responsibilities much like their private sector counterparts in industry and academia, and manage large public investments in areas of great importance to society and the country.

For instance, the assistant director that I cited before had a budget of $500 million, not a small task to administer.

The second proposal I have is to accept differential salaries. We must be willing to pay more for scarce skills. A computer scientist, for example, commands more salary in today's market than many other scientists and engineers.

And salaries clearly differ among geographic areas. Salary differentiation among jobs should be based on the market as well as on distinctions in level of responsibility.

My third proposal is to break the link between executive branch salaries and congressional salaries. Congress needs to come to grips with its own salaries. If it cannot, it should not penalize the rest of the government.

The next two actions, while not mandatory, are highly desirable and would allow federal agencies mechanisms to compete in the marketplace for superior performers. The first one is pay bonuses and salary supplements. A mechanism that is increasingly used by the private sector and has been proposed both by the Naval Academy and the National Institutes of Health is the use of bonuses or salary supplements to compensate individuals who are both high achievers and in fields with high competition from the private and academic sectors.

The second proposal in that category is to allow flexible and broadened IPA authority. Congress should support the salary flexibility inherent in the Intergovernmental Personnel Act, which allows individuals to be detailed to the Federal Government while still receiving the salary level of their home institution.

Unfortunately, NSF's authority to pay such salaries has been restricted by the Congress to $95,000 as an upper limit. While this is above the pay cap, even $95,000 is no longer sufficient to cover the salaries of many executive scientists and engineers. For example, the home base salaries of two of our assistant directors are approximately $115,000, with the amount over $95,000 paid by their home institutions.

Congress should also allow using this authority to hire individuals from industry. Cost-sharing by industry is now forbidden, yet this is a potential source of senior scientists and engineers whose salaries we can rarely match, but whose firms may have a greater ability to share costs than many academic institutions.

An aberration of the present legal system is that while cost-sharing is not allowed by industry for government employees, an individual from industry paid in full by his company can, under some circumstances, perform the work equivalent of a government employee while on temporary duty.

So we have a discrepancy here in the law.

In conclusion, salary, while only one of the factors that can affect an individual's interest in public service, is a factor that cannot be ignored. The Federal Government is increasingly unable to compete with the private sector and with academia, or even with state universities, for top flight scientists and engineers—a sad commentary on the erosion of federal recruiting power.

In the end this will certainly reflect on the quality of public service. NSF and all government agencies with scientific and technical missions need your help in providing the going rate for capable and very much needed scientists and engineers.

Thank you for this opportunity to provide my views.

[The prepared statement of Mr. Bloch follows:]

TESTIMONY OF MR. ERICH BLOCH
DIRECTOR, NATIONAL SCIENCE FOUNDATION
BEFORE THE
HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE
ON THE RECOMMENDATIONS OF
THE NATIONAL COMMISSION ON THE PUBLIC SERVICE
MAY 16, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I want to thank the Committee for providing me this opportunity to comment on the recommendations of the National Commission on the Public Service. The views I am expressing today are solely my own and not those of the Administration.

The Volcker Commission has properly focussed attention on a number of issues regarding the recruitment, retention, motivation, and recognition of Federal employees. I endorse this report and urge the Congress to give full consideration to the recommendations of the Commission. In particular, I would like to address the impact of current pay policies on Federal executives, with emphasis on scientists and engineers.

Salaries for Scientists and Engineers

Since my arrival at the National Science Foundation in 1984 from the private sector, I have been impressed by the competence and dedication of the total staff and the executives in particular at the NSF. These men and women have chosen public service, often over more lucrative private sector and academic careers.

It has become increasingly difficult, however, to attract and keep this caliber of individual because of the differences between pay for Federal executives and their counterparts in academic research institutions and industry. Recruitment searches of six to nine months are not uncommon.

The gap between Federal and academic and industry pay scales is widening, making the hiring of competent people in the future even more difficult than it already is today. The most we are now able to offer is $80,700 (SES Pay Rate 6) for Federal employment. Recent studies show that salaries for full professors at major private research universities now average $90,000 - $100,000 in the natural sciences and engineering. Public universities are not far behind at $75,000 - $90,000. Salaries in industry show similar high levels (details are provided in the appendix). It is difficult to ask prospective executives both to forego their research and to take a significant pay reduction to come to NSF.

The situation was not always this bad. The report of the Task Force on Pay and Compensation of the Volcker Commission graphically tells of the widening gap between Federal and private-sector pay:[1]

o The purchasing power of salaries of top executives in the Federal Government have decreased by more than 30 percent over the past 20 years. At the same time, salaries of private-sector executives have increased substantially, and were higher than Federal executive salaries to begin with.

o From 1970 to 1987, the cost of living increased 183 percentage points. While pay for private sector white-collar workers compensated for 90% of this increase (165 points), pay for Federal white-collar workers during the period compensated for only 68% (124 points). Thus, Federal employees lost in earning power compared with their counterparts in industry.

o Pay for white collar Federal workers is on average 22 percent below pay for similar types of work in the private sector. Pay increases needed to keep even with the labor market have been computed, as required by law, but not met.

An equally serious problem is the compression of the pay for our senior program directors. The pay scale for these employees overlaps with the lowest three of the six SES pay rates. This compression negates meaningful performance and incentive distinctions, and severely limits agencies' ability to establish reasonable organizational structures and to provide career incentives for superior performers.

NSF Staff

NSF's scientific and engineering workforce consists of over 400 individuals, more than 300 of whom have Ph.D.'s. The number of scientists and engineers at NSF over the past 5 years has grown from 366 to 434 and the percentage of temporary employees relative to permanent employees has increased from 23 to 34 percent. NSF has consciously increased the ratio of temporary to permanent (career) employees over the past five years in order to use scarce expertise in emerging areas of science and engineering. Many temporary employees are on leaves-of-absence from their home institutions (other Government agencies, universities, and sometimes industrial firms).

1/ Leadership for America: Rebuilding the Public Service, Task Force Reports to the National Commission on the Public Service, Task Force on Pay and Compensation, p. 206.

This approach provides NSF with a continuing influx of experts at the leading edge of their disciplines who can assure that funds are used to support the most promising projects and help develop or refine programs. Temporary employees infuse new ideas and experiences, and enable NSF to obtain expertise that would not otherwise be available. These temporary employees complement a cadre of career employees who provide institutional culture, knowledge, know-how, and continuity.

This philosophy of maintaining a staff balance between temporary and permanent employees has served NSF's needs well for over 30 years. NSF's dual staffing system has contributed greatly to the excellent reputation the Foundation has enjoyed.

It has not, however, been an easy staffing strategy for an organization that administers rather than performs research. Limits on active research and family issues such as dual career couples affect our ability to attract scientists and engineers to NSF. As government salaries begin to lag seriously behind those of senior researchers and administrators in an increasing number of fields, the "salary factor" adds significantly to our recruiting problems.

The Salary Factor

NSF managers consistently state that increasing salary differentials between academia and government are making recruitment more difficult. As examples, the divisions of Chemistry and Materials Research operated with acting division directors for 7 and 12 months, respectively. the previous incumbents of those positions -- both long-term NSF employees -- moved to senior administrative positions at universities, with salaries well in excess of $100 thousand a year, versus their salaries of about $75,000 at NSF. The Assistant Director for Mathematical and Physical Sciences, Rich Nicholson, has recently accepted the position of Executive Officer at the AAAS, and press reports of his salary suggest that it exceeds even the salary he would have received had the proposed SES salary increases taken effect. The prospect of replacing him is a daunting one, made even more difficult by the current maximum SES salary level of $80,700.

Differences in cost-of-living further complicate recruitment for the Foundation because the cost-of-living in the Washington D.C. metropolitan area is among the highest in the Nation. This is especially true for housing, a central concern of temporary staff. Calculations for recent rotators at NSF show that nearly two out of every three rotators are incurring higher living expenses in Washington than in their home cities. Of those who incur higher costs, over 70 percent sustain living costs that exceed those of their home area by more than ten percent.

A major stumbling block to securing higher compensation for senior executives is the tie between Executive Branch and Legislative Branch pay. Because of the sensitive issue of Congressional pay, it has been difficult to obtain salaries for senior government executives that are competitive with salaries many can earn in the private sector or in State universities. How have we tried to cope? Senior individuals from universities are available to us when they reach retirement age. They also were available to us without a salary cap until recently by using the IPA authority. Today, with the salary cap placed on NSF we depend on increased financial support from academic institutions.

On rare occasions we can recruit senior people from industry on a totally volunteer basis. And individuals are available to us if they are willing to take a pay cut in order to fulfill a public service objective. Such individuals exist, but we cannot depend on individual philanthropy to run a major agency.

These circumstances effectively eliminate the input from the younger sector of the science community who cannot afford to give up a portion of their salaries to come to the Foundation. Also, participation from faculty of smaller, less affluent institutions is curtailed because of financial commitments required under the IPA cap.

Recommendations

The Government urgently needs to reexamine its salary structure and policy, which are tied to distinctions based on types and levels of duties rather than market values for jobs. As academic salaries increase and diverge among fields, Government salaries must do likewise if we are to compete effectively for talented scientists and engineers. The alternative, and the present situation for senior people, is that the Government is unable to attract individuals in high-paying fields or must raise everyone's salaries in order to do so, an approach that makes little sense either politically or in terms of comparability with the private sector. "Special rates," regarded as a deviation from the norm, should in fact be the norm for fields in high demand.

What steps must be taken to enhance our ability to recruit senior scientists and engineers? Let me personally propose some.

Pay Market-Based Salaries. Government employees should earn salaries comparable to those in the private sector, because they have responsibilities much like their private-sector counterparts in industry and academia and manage large public investments of great importance to society and the country.

Delink Executive Branch salaries from Congressional salaries. The sensitivity of Congressional salaries, as was recently demonstrated, limits our ability to pay market-based salaries to Government managers.

Accept Differential Salaries. We must be willing to accept the step that academia and industry have taken by paying some more than others, even for performing the same duties (for example those of a program officer). An electrical engineer or computer scientist, for example, commands more salary in today's market than other scientists and engineers doing similar "grade" level work. Salary differentiation among jobs should be based on the market (e.g. occupational pay, locality pay) as well as on distinctions in levels of duties and responsibilities.

Seek Higher Salaries for Some Percent of Scientist and Engineer Employees. One way of making distinctions, in my view, would be to allow some percentage of scientists' and engineers' salaries above the cap, and then allocate these to fields most in demand.

Pay Bonuses/Salary Supplements. A mechanism that is increasingly used by the private sector is the use of bonuses or salary supplements to remunerate individuals who are both high achievers and in fields with high competition from the private sector.

Allow Flexible and Broadened IPA Authority. I suggest that the Congress support the salary flexibility inherent in the Intergovernmental Personnel Act, which allows individuals to be detailed to the Federal Government while still receiving from the Federal agency the salary of their home institution. In the absence of an IPA cap this Act allows agencies salary flexibility to attract for temporary assignments individuals whose salary levels could not be met under the constraints of the Government pay cap, and to pay the salaries of the home institution. Unfortunately, NSF's authority to pay such salaries has been restricted by the Congress to $95,000. While this is above the pay cap, even $95,000 is no longer sufficient to cover the salaries of many scientists and engineers.

The Congress should also expand this authority to individuals from industry. Cost sharing by industry is now forbidden, yet this is a potential source of senior scientists and engineers whose salaries we can rarely match but whose firms may have a greater ability to share costs than many academic institutions. An aberration of the present legal situation is that, while cost-sharing is not allowed by industry for government employees, an individual from industry paid in full by his company can, under some circumstances, perform the work equivalent to a government employee while on temporary duty. Authorization for cost sharing by industry would be beneficial not only within the IPA context

Mr. FORD. Thank you.

How many vacant senior executive service positions do you have at the NSF?

Mr. BLOCH. Vacant ones? We have right now approximately 10 vacant positions. We have two vacant positions in the assistant director area; and we have between six and eight in the SES area.

Mr. FORD. To what extent are those vacancies attributable to pay compression?

Mr. BLOCH. Well, a lot of it is due to the pay level itself. And I would say the pay compression is a secondary factor. It is also due to the fact that we are trying to attract people who, when they are moving into the Washington, DC area, are faced with a different economic environment than they might be used to in their home base, be that in the Midwest or the South or the North or the East or the West.

So I think there are those two factors at work.

In addition to that, as I said before, many of the people who we are trying to get as rotators, not as permanent employees, have to interrupt, essentially, their research. And that puts an added consideration on their decision to come or not to come.

Mr. FORD. I assume that one of the factors that accounts for your difficulty is that the people have to move to the Washington real estate market?

Mr. BLOCH. That is correct.

Mr. FORD. Do you operate facilities any place outside of Washington?

Mr. BLOCH. No, we do not. We are centralized here in Washington. We are in two locations in Washington, but our whole function happens to be in the Washington area.

We have considered, by the way, for your information, having people stationed in their home location, and essentially, telecommute, so to speak. But you can only do that in some very restricted activities and restricted kind of areas.

Mr. FORD. Thank you.

Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman.

We certainly welcome Mr. Bloch before us to round out our hearings on the public sector and public service, and what we should be doing with regard to some of the pay scales.

I understand that the National Science Foundation is implementing an experimental program, similar to the China Lake Program, through use of its excepted authority. Can you tell us a little bit about that program?

Mr. BLOCH. Yes, indeed. Through the excepted authority we have implemented a program that has five tiers, essentially, that are being defined, from very junior level to senior professional levels. First of all, by reducing it to five levels, it allows us a lot more flexibility.

It also, through our excepted authority, allows us to enter people at any point in any of these broad levels, not just at the beginning of it, commensurate with the work they are doing and commensurate with their skills and commensurate with the salary that they are getting in their home institutions.

It also allows us to move people through these five levels in a more direct way than the present official system would allow.

We are using it for professional people, primarily scientists and engineers. And I think it has worked very well for us.

We also have a pool of a small amount of money, 1.5 percent of the salary pool of that particular group of people, that we can use as bonuses.

Mr. GILMAN. Thank you.

Mr. GILMAN. Thank you, and I yield the balance of my time, Mr. Chairman, to the gentlelady from Maryland.

Mrs. MORELLA. I thank you very much, Mr. Gilman and Mr. Bloch, we welcome you in appearing before this Committee. You are following a line of prestigious, prominent people such as yourself—the Director of National Institutes of Health, the former Administrator of NASA, the Chief Justice of the Supreme Court—and all of them are responding to the Volcker Commission report as it affects their purview or jurisdiction and so it really enhances our record and our knowledge of what is happening with National Science Foundation, which I believe as you do is our key to competitiveness as a nation.

I am interested in your recruiting problems. You indicated there are six to eight vacancies. Can you point out that you have problems recruiting and retaining? For instance, I had heard that you even have problems with filling the 2-year rotator slots. Can you explain that to the Committee?

You see, I have a particular advantage in a way in that your authorization comes before Science, Space, and Technology Committee so I understand a little bit about what you are doing.

Mr. BLOCH. Well, I know you are very familiar with our operation. Six to eight openings at the SES level might not sound like very much, but let me tell you that in many cases it takes us a long time to find a person who is willing to join us as a rotator at a non-SES level.

Also, many times we have to go to academic institutions that are operating at a lower pay scale, so that it is a better match to what we can offer. This limits, obviously, our ability to attract a variety of people and it is very important in all of the fields that we are dealing with to attract a variety of people that have different viewpoints the developments in science and engineering. So that is a problem.

A third problem is that a lot of executive time and management time has to be spent to look for people and one should not underestimate that. I do not know how many people we talk with for every position that we finally fill. It takes us a long time, many times, and obviously the management team wants to overlap that time. When they know of an opening coming up they start to work on it immediately.

So those are the problems that we are encountering.

Mrs. MORELLA. So it is taking more time now to try to fill whatever slots you may have that are vacant and you are finding people are turning you down at the last minute, too?

Mr. BLOCH. We are finding people that are turning us down initially and we are finding people that are turning us down in the middle of the process and at the end of the process.

Mrs. **Morella**. Are you able to function effectively despite these obstacles?

Mr. **Bloch**. Well, I would say yes, we are functioning effectively. But the point that I want to make is that if you project this trend into the future, where the gap is widening on us, there will be a time when we probably cannot function effectively. We will try our best, obviously, under any circumstances, but the salary gap is widening, the problem is getting more severe and as I said before, it takes more time and more effort and you have to contact more people before you find somebody who is willing to join you for a few years, or permanently.

Mrs. **Morella**. Mr. Bloch, you mentioned in your testimony this Intergovernmental Personnel Act which would offer salary flexibility. It almost seems like you would say total flexibility. In other words, remove that $95,000 cap. First of all, is that what you mean? Secondly, how far would you have to up that—what would be the highest level, do you think, in order to operate as effectively as you would like?

Mr. **Bloch**. Well, certainly $95,000 is not the level that we should be operating in. We should be operating at a much higher level. I gave you the example of two assistant directors that right now are making $115,000 and I would say that is not at the upper limit. But anything around $120,000, $130,000 would give us more flexibility than we have right now and probably would help us at least for a while.

I do not know what is going to happen to the pay scale in the academic institutions. Over the last few years it has been increasing. It has been increasing at a greater rate than the cost of living has been increasing.

Mrs. **Morella**. You also talk about letting the market, in a way, dictate differential in terms of salary. Would this have a demoralizing effect, do you think, on some of our other agencies, departments, people who perform similar duties, similar responsibilities, but are not quite as in demand?

Mr. **Bloch**. Well, I would say the experience—and it is not the experience in the Federal Government, it is the experience in the academic environment and in industry— speaks against that. Academia today and for the last 5 to 8 years, state as well as private universities, had to go to differential systems for their professors, assistant professors, et cetera, because of the need to fill slots that were in high demand in our economy.

In the beginning there was a concern about that. I do not think you hear anything today about it. Industry has been operating that way, forever. Coming from industry, though, I know what we had to go through. Yes, once in a while you hear a complaint, but you hear a complaint about a lot of things. I do not think it is a major problem and I would not think that in the Federal Government it would be a major problem.

People accommodate themselves to it, they understand the reason for it. They know we are in a competitive market environment. Why should the government not participate in that market environment?

Mrs. **Morella**. You know, President Bush in his recommendations to Congress has talked about a 25 percent increase in the judicial branch, but then has talked about an increase in some scientific areas, again where there is a great need, focusing I would imagine on some of the work that is being done at the National Institutes of Health. Do you think that National Science Foundation would be included within that area?

Mr. BLOCH. I certainly would hope so. In fact, you know I do not know why you want to draw a dividing line between NIH and NSF. True, NIH is operating its own laboratories. We do not. But we are administrating close to $2 billion as you know, Mrs. Morella, and in order to administer that we need the best scientists and engineers. It is not a job that you can leave to somebody who has no knowledge about what is going on in the scientific and engineering world.

Mrs. MORELLA. Why do scientists go to NSF?

Mr. BLOCH. Pardon?

Mrs. MORELLA. Why are scientists drawn to NSF?

Mr. BLOCH. Why do they come to NSF?

Mrs. MORELLA. Right.

Mr. BLOCH. Well, a lot of them have a desire to serve in the Federal Government. A lot of them consider it their duty to do at least a stint in NSF. NSF has a high reputation and I think a lot of people are attracted by the reputation. It is a unique environment, because you see all of science in front of you. You can do something about it. You can influence it. You can move it in a particular direction if you are a program officer or assistant director. So it is a highly desirable kind of open environment. Those are some of the reasons.

Mrs. MORELLA. Public service is part of that reason, as you mentioned at the very beginning.

Mr. BLOCH. Absolutely.

Mrs. MORELLA. How long do they stay?

Mr. BLOCH. Well, we have people that stay forever. We have people that stay 2 years and 3 years and we have people that stay only 1 year and 6 months. So it comes in all kinds of flavors, depending on the individual, depending on his or her home life, depending on the job. A lot of it is determined by the job.

Mrs. MORELLA. I do not want to take up more time, so that we can allow the other members of the Committee to ask questions. But you have touched on some of the other elements of the Volcker Commission report. I wondered if you might want to elaborate any further on the concept of inspiring young people to become involved on a need for a continuation of something somewhat similar to the Volcker Commission, on the whole concept of public service. They had many facets of it—trying to cut through red tape, trying to elevate public service.

Mr. BLOCH. I focused primarily on the pay issue, and I did this on purpose because I think that is one of the key issues, certainly. That does not mean that the rest of the report does not deserve all of our attention, especially the environment—the total environment—and that means delegation of authorities. That means the buildings in which we live. That means the professionalism that we recognize in people. That means the whole civil service, what we think of it and what our leaders say about it.

I was very aghast, I should tell you, that in some previous administrations, what was said about the civil service was not very flattering and was not very true, either. My experience with the civil service people here in the National Science Foundation is they are as good a group of people as I have seen anywhere in academia or in industry. They are dedicated, they are smart, they know what they are doing and I think we should recognize that.

Mrs. **Morella**. I would agree with you. Mr. Chairman, indulge me in just a final question. Mr. Bloch, what do you think we can do to convince Congress and especially to convince the public of the need for moving ahead with this kind of flexibility and enhancement of not only salaries to be more comparable—it will not be completely comparable—but also in terms of recognizing the importance of public service? That is our problem.

Mr. **Bloch**. Sure, that is a problem. But on the other hand, I am not convinced that that is an insurmountable problem. I think talking about it certainly helps. I think publicizing the Volcker report, publicizing your hearings continuing to talk about it and making comparisons, I think the American public would buy that in the end.

Yes, there is a lot of concern about it that has been shown over the last few months, but I think in the end people will have to recognize—and will recognize—that the Federal Government has to be in line with what the market pays for similar kinds of jobs and similar kinds of backgrounds.

Mrs. **Morella**. Should more be done with the media, trying to influence—or, let the media realize the importance of it so they can convey the message to the general public?

Mr. **Bloch**. Certainly that should help. That should help, but I do not think we should duck the issue. I think we should talk about it and we should talk about it openly rather than ducking it. It will not go away.

Mrs. **Morella**. Mr. Bloch, thank you very much for making a concerted effort to be here and presenting the excellent testimony. Thank you Mr. Chairman, and may I also just ask that something be included in the record?

I have a testimony here by Jonathan Cuneo and he represents NASCAT. NASCAT stands for the National Association of Securities and Commercial Law Attorneys. He could not be here and he wanted to come for that association, for the record on the recommendations of the National Commission on the Public Service. Mr. Chairman, may I ask unanimous consent that this testimony be included in the record?

Mr. **Ford**. Without objection, it will be so ordered.

Mrs. **Morella**. Thank you very much.

Mr. **Ford**. Mr. Myers.

Mr. **Myers**. Thank you Mr. Chairman. I commend you, Mr. Chairman and the Committee for looking into this very serious problem that confronts our government, and I am sorry I have not been able to be a more active participant but I have followed what you are doing and certainly support you.

Mr. Bloch, the story you have told this morning is most interesting, but some of us who have been around for a few years, this is not the first time that we have heard the story. It is a continuing story for—this is my 23d year here and the Chairman has been here a few more years than I have and it is something that we have been hearing constantly and we still have not addressed the problem.

But the story you tell is accurate. It is certainly true, but as has been suggested here, the American people—the taxpayer out there, the average taxpayer who is struggling to put shoes on his kids and give them a good education, to pay for the house and the refrigerator, the new car, and make all those payments, just is not convinced that the Federal worker is not adequately paid today.

It is a very difficult task to do, to convince the average person out there. Our mail reflects it, our visits back home confirm it. They just do not accept that and it is a job that not only the Congress has a responsibility that every Federal worker, I think, can convince, maybe help us in our task and your task in being better salesmen and to look at Congress to solve the problem of pay—adequate pay for Federal employees—as has been shown by history is almost a hopeless cause.

So I think all of us collectively have to do a better job to talk to the service clubs—the Kiwanis, the Rotary, the Lions—at every opportunity to convince the American people that we do have good people working for the Federal Government that are not really on the same pay scale as if they were working in the private sector, as you have addressed this morning.

But there is one other facet here that I notice you have not talked about and that is the so-called, the Federal retirement benefits. I constantly hear, well you Federal employees have a better retirement program than anyone else. What can you say about that? What about the other so-called perks, or benefits, that Federal employees get that the average person out there does not get?

Mr. BLOCH. Well, I agree with your first comment, obviously, that it is not only up to Congress to make that point, but the point has to be made by every Federal employee and also by the people who we are interacting with and who are working with us—the academics, in our case. For instance, people from industry who understand what research and engineering are all about and are, essentially, beneficiaries of what the Federal Government and the National Science Foundation are doing. So I agree with that.

On retirement, let me make just a couple of comments. From what I know about it, Federal retirement is not bad. In fact, it is a good program. I think from what I have seen and what I have heard, it is about equivalent, but not much better—if better at all—than the retirement programs that exist in the academic environment or in industry.

Now, I agree—and I know industry, obviously, very well—it is very varied from company to company. But I think we should model ourselves not with the worst, but with the best. Certainly, with the average that exists in industry, the Federal retirement program is pretty good. I think it used to be a lot better than many industry and academic retirement programs. That has eroded also, over the years and I would say it is equivalent but it is not much better.

Mr. BLOCH. Now, the early retirement is available, that is you can retire a lot earlier than in industry, after you have spent 20, 25 years with the Federal Government. But do not forget—you are also taking a financial loss as you do that. So it is compensated by that.

By the way, a lot of industries today are going to a more flexible retirement policy, and not keeping it to a 30 year, or 25 years, but also allowing a graduated kind of a retirement.

So all in all, I would say it is about equivalent to what we need to compare ourselves to in academia or in industry.

Mr. MYERS. Well, thank you. My suggestion a moment ago that the average person working out here for the federal government can help.

I do not suggest that—finally, we have to make that decision.

Mr. BLOCH. Sure.

Mr. MYERS. But we make our task much easier by people discussing it more than they have. It is not constantly writing letters to Congress.

I might say the last pay debacle we got into—we all received an awful lot of mail. And I—some of the mail I got were from some universities. I have six in my district; two very large universities. And a lot of the mail I got were professors and professors' wives who objected to sitting down there in Washington making all that money. We do not make it back home here.

And so it is a task that we all share.

Mr. BLOCH. Right.

Mr. MYERS. When you discussed bonuses in the program where supplemental mechanisms—who would make that decision? How do you decide which employee is going to get the bonus, or the supplemental, or the differential in pay. That is the thing we have always had a problem with in the government. That—as was asked the question here about—will that start dissatisfaction among workers if a person working next to you doing the same job gets a thousand dollars more a year than this person does are going to be—it is going to be demoralizing.

How are you going to make that decision?

Mr. BLOCH. Well, a bonus program is not something that is foreign to people who work in industry, for instance. And you decide on the experience you have with the individual—what he or she has done, what he or she has contributed. And it is a comparison of one performance versus other performances.

Is it a judgment? Yes, it is a judgment, in many cases. It is not a lot of the people that we are talking about, and they are not punching out buttons on the machine. We can count buttons, obviously. But I think we can make a judgment just as well.

And management is there to make that kind of a judgment. Management makes many judgments. Why not also make a judgment on the performance of one of your employees versus that of another?

Mr. MYERS. Well, I certainly support the concept, but I think an awful lot of people do not. Especially—I am not sure how many federal workers would agree with that.

Mr. BLOCH. We are evaluating people every year. We are saying how good or how bad they are, or how indifferent they are. And that is a first step towards determining what bonus, or if there should be a bonus or not.

Mr. **Myers**. Well, we get evaluated every 2 years, I know, and so——[Laughter.]

Does not seem to affect our pay any, though.

One last observation—delinking executive branch from the legislative branch seems like a simple solution right now. To you it does, because that would help your agency to move ahead. But we, also, have some real problems there.

You are making an assumption here that if new members of Congress want to work for less money, that is your business. But we have—you know, we are just a small fraction, really, of the legislative branch. The members, themselves—we have a lot of people working for us. We need expertise also.

I am trying to hire a lawyer right now. I cannot get a good kind of lawyer I want for the salary I can pay him. I just cannot do it.

So we have a great many talented people that we need in the legislative branch, too. So decoupling, while it might help you instantly, sure as the world does not help us. And it does not help us to do the task you are asking us to do, if we delink as you say.

So there, again, you are just looking very ominous on, I must say, very selfishly to serve your purpose.

Now, we have the responsibility, too, to get competent people to work for our committees.

Mr. **Bloch**. I would not deny that I talk from a very selfish viewpoint. Obviously, that is what I am responsible for—the agency, and not Congress.

But let me suggest triple delinking—you could delink Congressmen and Senators pay from that of your staff.

Mr. **Myers**. Then we would back to the Roman plan, where you are a member of the Senate, then 2 years from now, I will become the staff and somebody else—my staff member becomes a member. That is what we will be doing. Leapfrogging, I guess. Maybe I would be better, anyway. I do not know. Maybe you might get a raise that way.

But, anyway, it is a very serious problem.

Mr. **Bloch**. I understand your point, but I hope you also keep in mind that in the meantime we have a job to do and whatever it takes to do that job, I have to tell you what it is and how you can help us.

Mr. **Myers**. I understand you. I thank you. I could not think of that word "Senate." I never can remember that word. [Laughter.]

Well, thank you very much for your testimony, Mr. Bloch.

Mr. **Bloch**. Thank you.

Mr. **Myers**. Thank you, Mr. Ford.

Mr. **Ford**. Mr. Bloch, help me a little bit with the history of your agency.

Mr. **Bloch**. The history of what?

Mr. **Ford**. When did it come into being and where did it come from?

Mr. **Bloch**. The history of?

Mr. **Ford**. Your agency.

Mr. **Bloch**. Of the agency, I am sorry.

The history of the agency—the agency was founded by a congressional act in 1950. It was right after the war. And the fundamental concept of the agency was to continue what was started during the war years. Namely, it is a focus on basic research and using basic research for the national well-being and the national good.

It was recognized during the war and confirmed thereafter by the National Science Foundation Act that the federal government had a role to play in that pursuit.

And so it was essentially to support basic research, which is for the good of everybody. Basic research in the sciences and in engineering, as well as education. So it was a focus on education and focus on basic research.

The agency over this time frame of nearly 40 years has grown to what it is today. It is an agency that supports most of the natural sciences, and of engineering. It does not support the medical sciences by law. We are also supporting the social sciences.

We cannot operate our own laboratories. We are doing our work through the grant mechanism—going primarily to academic institutions, because in this country, as you know, basic research is concentrated in academic institutions.

Mr. Ford. It occurs to me, in listening to the questions here over the past several weeks, that the generalizations that are made about Federal pay—vis-a-vis private sector pay—including such things as fringe benefits, partially paid health insurance, and pensions—relate to a different time.

In the Depression years of the early 30s, people who had a government job were looked up to by that 20 percent of the population that was not working.

The real stable families were the ones that had a government job, because the government kept on working. The real kings were the letter carriers. They had a uniform and they walked down the street, and the family did not go hungry if he got sick because there was something called sick leave. Nobody in factories and other private sector employment had those kind of things.

A whole generation of Americans has the idea that a government job is a sinecure, and it stays fixed in their minds.

Now, in the meantime, conditions for employment, while they have been spotty in some places at some times, they have continued to increase.

Most major corporations in this country—including the Grace Co. which we studied very carefully, because of Mr. Peter Grace's constant attacks on our pension system—have pension systems that are much more generous than the federal system.

It appears to me that most Americans do not know that we have government workers like you people at the National Science Foundation. They think of government workers as tax collectors and customs agents and postal employees. They do not know that we have got buildings full of scientists down here, engaged in direct efforts toward basic research.

In the 30s nobody dreamed that today, the government would be looking for lawyers who know something about environmental law. An environmental lawyer in this town is a very scarce commodity at the moment; a very scarce talent.

Nobody would have dreamed that we would have a national effort mounted for research into man's major diseases. They never would have thought of the federal government as performing missions with trained scientists, engineers, medical doctors, economists, all kinds of positions that have come into being in the last 50 years, that were not there in the first 150 years.

Yet we are operating with a 50-year-old pay system that in no way recognizes the market place pressure that we are competing with in trying to get talent.

Our present pay system does not take into account the difference between living in Mr. Myers' district in Indiana, and living in Washington, or living in Mr. Myers' district in Indiana and being transferred to San Francisco. God forbid that. That is the next big high price place.

As a matter of fact, FBI agents will not take a promotion from his district to mine, because of the difference between Indiana and the Detroit area of Michigan in housing costs.

We see evidence of this all the time. And what we are really dealing with here, Doctor, is trying to get a good hold of this thing and really wrench it. We cannot nibble around the edges. It has been nibbled for years.

Mr. Gilman escaped from his infernal machine. [Laughter.]

Mr. FORD. We did not have those things to contend with in the 30s either.

But the attempt that must be made is not to just compare dollar amounts—this job pays this much, and this job pays this much. We have have to devise some kind of a rational system that the public would understand. More importantly, a system that federal employees would understand to be fair and have some sense to it. A system should take into account not only special skills that people have, but where we expect them to be to use those skills.

As you indicated, you find it necessary sometimes to have people—I think you said—telecommute.

Mr. BLOCH. Right.

Mr. FORD. You cannot get them to move to certain areas. You have to use communications devices to talk to them where they are.

I was wondering what it would take to get somebody to leave a university like Michigan or Indiana to forego the tuition payments that would be forgiven for their children, and come to Washington for an extra $10 or $20,000 a year. Much to my surprise, since we have gotten into these hearings, I have discovered that university salaries have been changing.

Mr. BLOCH. Exactly.

Mr. FORD. The officials at the National Institutes of Health tell us that in their field, the average gap is now $90,000 between the researcher at a medical university and researcher at NIH. Twenty years ago, the difference was only $30,000, which was not all that much for a researcher to give up other things being about equals. But the combination now, coming for less money to the highest cost of living area in the lower 48 states, becomes insurmountable. We have found that agencies cannot bring people to Washington unless they are already with the government in some other capacity.

I was shocked to learn that at NIH they have not been able to recruit a single research doctor from a medical school, directly from a medical school to NIH for over 5 years. The only new doctors that have come to NIH in that period of time have come in from other Federal agencies—either from the military, or from the Veterans Administration, or from some other agency that was employing them. In other words, they were making a lateral transfer.

What you are telling us about the National Science Foundation parallels very much the NIH experience. That is the reason I think that Miss Morella brought the NIH into it.

Part of our job is to get the American people to understand that we are not talking about plumbers and pipefitters. We do very well, by the way, for our plumbers and pipefitters. We adjust their wages according to the prevailing wage for their skill in the area that they are in.

There are 600,000 Federal workers who get their wages adjusted by the prevailing wage for the area that they work in for us. They all wear blue collar shirts when they go to work. That has been going on for years. Nobody has complained about it, and nobody thinks that it is extravagant, and it works.

When we start talking about doing the same thing for the executive level of the government, that is when the talk show host get all excited about it. The talk show host who says "You do not need more money for your people at the National Science Foundation in Washington," would not think of getting on there and saying that a plumber in Tupelo, Mississippi ought to be paid the same as a plumber in Chicago, or New York, or Detroit. That is exactly what we do for our professional and clerical employee. We pay them the same whether they are in the lowest cost area you can find, or the highest cost area.

Thank you very much for your help. We hope before the hearings are over, more citizens will know that when they see something that says it came from the National Science Foundation, that it was through the work of Federal workers.

Mrs. MORELLA. Mr. Chairman, could I point out something that might be helpful in our trying to disseminate this information—I thought about it when Mr. Myers asked his question and you commented on it also.

Is there not a lot of research done by the federal establishment that benefits the private sector? I say that because I looked at your background and you spent a lot of time at IBM. And it just seemed to me that that is another way of selling this—we should not have to sell, but try to market the concept that the federal research assists us in not only competitiveness, but in everything that we do.

Mr. BLOCH. I think that is absolutely right. You know, when I commented before that we have to be helpful in spreading the word and in making that particular point, I do not just mean with academic institutions but with industry equally, because you are right in what you are observing, that industry benefits from basic research. The government benefits. These are the two major sectors of our society that benefit directly from it and that have an interest in it, and we have a relationship with them.

Mrs. MORELLA. One thing you did not mention that we heard from some of the people representing NASA a couple of weeks ago was the concept of this legislation, the revolving door legislation. Has this presented a chilling effect to any National Science Foundation people?

Mr. **Bloch**. No. That really has not affected us, because we are not operating with contracts, or on contract except in very remote areas like administrative areas. We are making a grant, and the legislation does not speak to that particular point, luckily.

Mrs. **Morella**. I see. Fine. Thank you. Thank you Mr. Bloch, and thank you, Mr. Chairman.

Mr. **Bloch**. Thank you.

Mr. **Ford**. Thank you, Mr. Bloch. Now, we will have Anthony F. Frank, Postmaster General of the United States. We are very pleased to have you here, Postmaster General Frank. You and I have had a number of conversations about how the linkage to your agency with pay limitations otherwise found in the Civil Service system have been affecting us.

Without objection the Postmaster General's prepared statement will be inserted at this point in the record in full. You may proceed to add to it or supplement it in any way at all. But before you proceed I want to recognize Mr. Gilman.

[The statement of Mr. Frank follows:]

STATEMENT OF POSTMASTER GENERAL ANTHONY M. FRANK BEFORE THE HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE CONCERNING EXECUTIVE PAY

May 16, 1989

Mr. Chairman:

I very much appreciate this opportunity to register my concern about the debilitating effects of the current executive pay limits. In an organization as vast and complex as a $38 billion Postal Service, the lack of sufficient pay flexibility at the executive level is not in the public interest. It undercuts what we need to do to have the best possible mail system for the American people.

The Postal Reorganization Act states that compensation and benefits for all officers and employees must be maintained at levels comparable to the pay and benefits provided for similar work in the private sector. But at the same time, the Act caps available compensation rates at level I of the Government's Executive Schedule. The fine reports you have received from the recent citizen commissions studying federal executive pay have amply documented the tremendous loss in purchasing power which has come about, as attempts to update this benchmark have lost a continuing race with inflation.

Until 1971, of course, the United States Postal Service was the Post Office Department, in which my position was a Cabinet post. When we were depoliticized, the most the Postal Service could pay was pegged at the Cabinet level. In practice, the have something special to offer, namely the opportunity to serve our country.

But there are limits on how much of a financial penalty we can impose in expecting top people to work here. Right now, even a middle to lower level executive at many good-size corporations can expect to earn more, as a top performer, than some of our higher level executives who manage ten or even a hundred times the budget and workforce. That's not right and that's not fair.

We now have extraordinary compression in our compensation. For example, our division managers, who manage about 10-16 thousand people, earn $80,000, with a performance bonus opportunity that might take some of them to about $90,000. Their next avenue of promotion is to be one of our five regional managers, who each manage an operation with about 150,000 people, and make $95,000. Their boss, the Deputy Postmaster General, who is responsible for over 750,000 employees, earns $97,500. In other words, there is a spread of income between managing 10,000 and 750,000 employees of $7,500!

The problem is compounded by the fact that serving the whole country gives us a need to be able to move managers who are producing best for us to positions of increasing responsibility, often in higher cost areas. We've had people say no to higher positions, because they feel they would face a net financial loss moving to a metropolitan area where the cost of living is higher. We've tried to promote people who have been top performers to jobs in places like New York or Washington and they say, "Don't do me any favors." And under current limits we do not have enough room to deal sufficiently with this problem.

One of the criticisms of the U.S. Postal Service is that there is insufficient accountability and insufficient risk taking by our senior people. Frankly, there is no monetary incentive whatsoever in order to accomplish either of these aims. I would propose, if an increase were granted, to reserve most of the authority for significant bonuses to be paid on multi-year pre-negotiated performance objectives.

Despite the limitations I still think we have a dedicated, hardworking corps of managers who serve this organization and the public well. But there's no free lunch. If the problem is not corrected, the postal system and the mailing public will bear the brunt of the unreasonable compensation restrictions for these critical and difficult jobs.

I will be delighted to do whatever I can to help this committee's efforts to deal with this situation. As always, it's a pleasure to work with you. And I'll be glad to answer any questions.

Mr. **Gilman**. Thank you, Mr. Chairman. I want to welcome our Postmaster General. I just regretted I could not be with him up in upstate New York. We thank you for going to Poughkeepsie, New York and doing honors up there.

Mr. **Frank**. Yes, sir.

Mr. **Gilman**. I have to go to a press conference and I hope to return momentarily. Thank you, Mr. Chairman.

STATEMENT OF POSTMASTER GENERAL ANTHONY M. FRANK

Mr. **Frank**. Thank you, Mr. Chairman and members of the Committee. You have asked me to summarize my statement and I will.

I very much appreciate your holding this hearing. I know that discussing increases in executive pay is not the most popular thing to do, but we in the Postal Service are hurting, and hurting badly because of the lack of sufficient pay flexibility.

We run the largest business in the country in terms of people and the fourth or fifth largest in terms of annual revenue. This absence of ability to have any flexibility in pay is certainly at variance with the legislation that created us.

Namely, the Postal Reorganization Act of 1970, which stated that compensation and benefits for all officers and employees must be maintained at levels comparable to the pay and benefits provided for similar work in the private sector and yet at the same time, of course, it limited the pay of the Postmaster General to Executive Level 1—that is, of a Cabinet officer and as a consequence, the highest pay in the Postal Service is mine—$99,500. Everybody else bumps up against that limit. That is the only pay limit in the Postal Service.

So my request today is to ask that the authorized level at which the Governors can set my salary be increased. I obviously, personally would waive the increase, but I need the increase in the authorized level.

I just came back from a meeting of the Postmasters of Europe, of the developed countries, and when you look at our volume, compared to theirs and what they get paid, it is all the more anomalous. Canada pays its top executive about $250,000 and he supervises a system with 8 percent of our volume.

Australia—with a population less than that of California—pays its Director General $160,000. New Zealand, which is I guess about a fifth of the size of Australia, pays its Director General more than Australia pays its. We are out of step with the rest of the world in terms of executive compensation.

We are not looking for comparability, here, with the private sector in the United States. I gather than Roger Smith makes about 80 times what a UAW worker makes. We are not looking for that.

Mr. **Ford**. If I could interrupt you there. One of the members the other day told us that the chief executive officer of the division of Disney Enterprises that runs Disney World makes more in a year than compensation of all of the people who would have been covered by the pay increase that was defeated in January, and nobody blinks an eye at that. Of course you get to see Mickey Mouse out there and that seems to be more important.

Mr. **Frank**. We are not looking for comparability. We have a lot to offer people and it helps us in recruiting people—namely, a chance to serve their country. But we do have a financial penalty on our top people, particularly those that have children they want to put through college. That really is where it seems to come right now.

We have an extraordinary compression in our compensation. We have 75 division managers. They each supervise about 10,000 to 15,000 people. They make about $80,000, which, with bonuses for some, might bring them up to about $90,000. Then we have five regional managers who each manage ten times as many people. They make $5,000 more. Then we have a Deputy Postmaster General who supervises about 750,000 people. He makes $2,500 more. So the incentive to go from supervising 10,000 employees to 750,000 employees is $7,500 a year and a lot of strain and pain and for all I know a shortened life.

The other problem—one of the other problems that we have is the inability to move people around the country. We have people say no to even being considered for relocation, because they would face an enormous financial loss.

I can tell you anecdotally we persuaded our division manager from Houston to become our Regional Postmaster General in Philadelphia. I saw him the other day. He said, "I had no idea how much financial sacrifice I was making." Financial sacrifice for supervising 12 times as many people.

Obviously, different taxes—city tax and state tax in Philadelphia, different cost of housing and so on, from Houston, Texas. But that is one example. We have many, many dozens of people who say, no thanks, I do not want to be considered, when we look for relocation.

At the present time, we have had openings in our key divisions of New York and Boston for many months. It is difficult to find people in our system whom we consider qualified and willing to take those jobs at the present time. New York represents 10 percent of the nation's mail volume and we cannot fill that position.

One of the things that we hear once in a while and I know the Committee hears, is that there is insufficient accountability and insufficient risktaking in the Postal Service and I think there may be something to that. But there is no monetary incentive whatsoever in order to accomplish either of these aims.

I would hope that if we could get an increase in my authorized pay that most of that would be reserved for significant bonuses—not salary increases, but bonuses—to be paid on multiyear, prenegotiated performance objectives.

Please do not misunderstand me. We have hundreds of dedicated, hard-working executives who serve this organization. But we are starting to hurt from this pay limit. We are hurting in ability to transfer, we are hurting in ability—which I have not mentioned at all—to attract people from the private sector. We have had a number of people turn us down. Yes, we have people from the private sector that work for us because of the fun and the scope and the ability to contribute something. But even that is limited to some extent when you do not have the money to put your kids through school.

To conclude, we the American people, Mr. Chairman, are going to suffer if we do not get some relief on pay. It will not be, perhaps, apparent this year, the remainder of this year in 1989, except in New York and Boston and Brooklyn and some other areas.

But to contemplate no increases over the next few years, we will have a demonstrable falloff in the number of people willing to step up to these positions of terrific stress, long hours—sure, high satisfaction—we will have a falloff and it will hurt. It will hurt the mail service and the mail service is one of the things that binds our country together.

Thank you for entertaining my statement.

Mr. **Ford**. Thank you. I am trying to think back to the Postal Reorganization Act and the long fight we had here on that, the language that you made reference to, linking compensation to the government schedule, was probably intended at that time as a protection for the employees against the possibility that many of us thought was very strong, that the Post Office would never break even, and that when we stopped subsidizing it it would just fall apart. It's the same as our decision to just as we withhold transferring the cost for retirement benefits to the corporation at that time, because we did not want to jeopardize those payments to the employees.

Things have changed now over the life of the corporation. We now may want to consider whether it would be acceptable to delink compensation schedules in the Post Office and let the managers—you, the other managers and the Board of Governors—determine pay and benefit levels. I suppose we will hear from the mailers, who will be afraid that we are going to run the cost up.

I think it is fair to observe that your employees below the management level they benefited greatly from our action in including the right to bargain in the Postal Reorganization Act. If you compare the pay of your employees with what they would be paid if they were still employed directly by the government instead of by the postal corporation, there is a rather substantial gap.

It is almost as big a gap as the one between the private sector and the government. Postal employees are much closer to private sector wages than anybody else in the government. At the same time, there has been no similar adjustment upward for the management levels of the corporation. Do you still have areas where you have vacancies for management positions because you cannot get people to move?

Mr. **Frank**. We absolutely do. You will be hearing in the next week, I understand, from our ex-Postmaster of New York. We have not been able to replace him in that job. We have not been able to find a division manager for Boston. Even in those areas where we find them, the list of people from whom we can draw who are willing to have their name put up is so small that you do worry once in a while about the quality. Plus, as I say, attempting to attract people from the private sector is a real problem.

I appreciate your comments about comparable pay. We hear, as we should, every three years from the union and management organizations talking about comparable pay, but right now most of our key people make about three times what a good senior letter carrier makes and I do not think that is a fair differential considering the hours and with that, even, the differential probably would be reduced.

Obviously, our craft workers justifiably get overtime, while our executives do not, so it is possible for our craft workers to make in the low $40,000's if they wish to and so then there are people that get paid twice what a craft worker makes.

I would put in one other plug and that is that the compensation for our Board of Governors has not increased at all since 1971. It has not increased by a dollar. So either they were enormously overpaid in 1971 or they are enormously underpaid now. So that has not—at least executive salaries have gone up a little bit. The Board of Governors has not gone up at all.

Mr. **Ford**. Well, we are all familiar with the fact that both you and your predecessor—your immediate predecessor—served and are serving at a considerable personal financial cost and it is not likely that we will find very many people like you and Bob Tisch that want to come over and be division managers and take the hit that you have to take to serve.

We appreciate the fact that you are one person—Mr. Myers was a little upset when you said you would waive the increase. I do not think he was thinking about it exactly the way you were when you said that as far as your own personal consideration was concerned you put it up front that you are not looking for a pay increase for yourself.

The members of the Committee get sensitive about that because there are, particularly after what happened here in January. Why raise your pay? We have got plenty of people who would be glad to go down there and serve for less. We have got plenty of people I am sure that would take your job for less and that of the other managers in the department. I would not predict a long, successful tenure for any of them nor the fact that we would have a reliable Postal Service if we just took anybody and decided that that was adequate.

From the very beginning the Volcker Commission pointed to the fact that they rejected the idea that just having adequate talent in these managerial positions in particular and in the technical fields was not acceptable and I do not think that that is the design of this Committee.

We are going to have to have a look at what we can do in amending the Postal Code to deal with your problem and maybe it might be an easier one to deal with than the general government schedules.

Mrs. Morella.

Mrs. **Morella**. Thank you.

We are delighted to have you here, Mr. Frank. It is a pleasure to have you testify on this very important report.

Mr. **Frank**. Thank you.

Mrs. **Morella**. First of all, Mr. Chairman, may I ask unanimous consent that the opening statement of Frank Horton be included in the record; he unfortunately could not be with us and regretted that.

Mr. **Ford**. Without objection, it will be included in the record at the beginning of the hearing.

Mrs. **Morella**. Splendid. Thank you.

I wanted to ask you about the Ethics Code and whether that has had any kind of deleterious effect on the postal system. As I had mentioned to Mr. Bloch, we heard this repeatedly at one of our hearings about people who were retiring, and it was not only the salary issue, but it was the interpretation or the regulations that emanated from the new law, which was to tighten the revolving door; maybe it just eased everybody out.

Would you like to comment on that?

Mr. **Frank**. I have not noticed any drastic effect of the ethics law; it may be too soon. We do not have a revolving door, as many other government agencies and departments do. I do not think that is as big a problem for us, possibly even any problem, as it is for the Department of Defense and so on.

Mrs. **Morella**. It seems that one of your big problems, or the problem of the postal system is this locality differential, from what you have said in your——

Mr. **Frank**. It is extraordinary.

Mrs. **Morella**. Yes. How do we handle that kind of thing? I mean, this is not only part of the Volcker Commission concept, but we have heard this from other agencies, too, and I can see how it would be particularly a problem for you, but how do we truly handle locality or geographical differential in pay?

Mr. **Frank**. Well, it only applies to executives that are being transferred or being sought to transfer. So that does limit the problem.

And I think that you pay a temporary adjustment as long as they are there; that could be a considerable amount of money. Transferring somebody from Portland, Oregon, as we recently did, to San Francisco, that is a real sticker shock, as they say in Detroit.

And I think that person is entitled. Now, the FBI is starting to do that in New York. They give a 25 percent pay increase and a $20,000 bonus for going there for a period of three years. And we clearly will have to do that for the members of our Inspection Service, who right now are avoiding going to New York because it would just take personal bankruptcy.

There are solutions. It is a problem that is faced every day by private industry. And the answer is a temporary increase in pay to make up for being in that locality. I do not think it is great gobs of money. I do not think the mailers would object. It is in the interest of the mailers to have our best people there. At a guess, how much would it cost to do that?

Mrs. **Morella**. You see, what happens then, too, is that you set up a cost-of-living index, and so you add a differential for different areas, but then your other people who are not the executives then say, well, we are still living in this same market and why should we not have a differential?

Mr. **Frank**. I am well aware of that. And that is why I emphasized the aspect of transferring. The difference is transferring. These people live there; they have homes, they have family, they chose to live there. These people are being asked to transfer to a place that they are not eager to go to. So there is a difference.

Mrs. **Morella**. So it could be, then, restricted to situations where somebody transfers from one area into another one?

Mr. **Frank**. Yes.

Mrs. **Morella**. It is probably something this committee should look into very closely.

I was very surprised at your convincing statement about the fact that you got a spread of income between managers, those managing 10,000 employees and those managing 750,000 of only $7,500.

Mr. **Frank**. Right. Pre-tax.

Mrs. **Morella**. Which says something about the need for us to be able to also be more equitable in terms of the salary differential. Is there anything you would like to add?

Mr. **Frank**. Well, again, I want to make sure that nobody thinks that we are trying to get private sector salaries here; we do not need that.

But the chairman made some kind remarks about me and about Bob Tisch. But (A) we have resources and (B) we are not in this job forever. And I have people that have dedicated their lives, and dedicated is the right word, that have kids that are—what age would they be?—they would be teenagers; and that they genuinely cannot put their kids through school.

Now, if that is the biggest single problem, maybe we can attack it that way in some scholarship program or something for kids. But we are hurting. And we are hurting not just in theory, but in the practicality. And we are not talking about any money; we are talking, at a guess, somewhere between $1 million and $5 million a year, which, in the context of $40 billion—you know you hate to say that anything with seven figures is negligible, but it is negligible. And it would not affect mailers.

I think it is an equitable thing to do. These differentials in costs that we have in this country are going to get worse and not better. The difference between low-cost and high-cost areas in our country are going to get much worse. And we have just got to address it.

Mrs. **Morella**. As you know Mr. Bloch talked about a differential in pay, having the flexibility under an act that we have that has the cap so that the market could dictate who gets a higher salary. Is that a little dangerous? Or how would you respond to that?

Mr. **Frank**. Well, we have a Board of Governors; and I think that makes it less dangerous. They are responsible to the Administration and to the Congress and to the postal customers for their actions, and they do it in public meetings. So I do not think that.

I do not think we are talking about dramatic differences in pay. If you push me hard I would say I could solve my problem for the next four to five years with a possibility of increasing pay by a maximum, by $25,000 to $35,000 a year for a relatively few number of executives. We are not talking about great, dramatic increases.

But it would pierce my salary, which is legislatively set. That is the only problem.

There are many government agencies, I know you know this, here in town, where people get paid much more, and have I think, at least in terms of people and budget, a much lower responsibility. We have people making seven figures in this town, and doing a great job, but I just do not think it is a very unusual request. We are running a business. And we need to compete for people to some extent so that they are not penalized by working for the Postal Service. And that is what they are now.

I appreciate your interest very much.

Mrs. **Morella**. Thank you. I appreciate the work that you are doing.

Thanks, Mr. Chairman.

Mr. **Ford**. Thank you very much, Mr. Frank.

Once again the committee is indebted to you for your cooperation and that of your people with whom we continue to work. I will have a little visit with them afterwards with the problems that were brought to me yesterday. It is a continuing thing. But we do appreciate the prompt response we get from your managers when we bring problem to their attention.

I am going to ask our postal subcommittees to quickly have a look at the Postal Reorganization Act and see what we might consider as a rapid and easy amendment to take care of this problem for your agency.

Mr. **Frank**. Thank you, sir.

Mr. **Ford**. The hearings will be adjourned until May 25.

[Whereupon, at 11:23 a.m., the hearing was adjourned.]

RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

THURSDAY, MAY 25, 1989

House of Representatives,
Committee on Post Office and Civil Service,
Washington, DC.

The committee met, pursuant to notice, at 10:10 a.m., in room 311, Cannon House Office Building, Hon. Frank McCloskey, presiding.

Mr. McCloskey. Good morning. I am Congressman Frank McCloskey. Today our full committee holds the last in our series of hearings on the recommendations of the National Commission on the Public Service. As the Volcker Commission has pointed out, and as your hearings have confirmed, we are truly facing a serious, ever-increasing people problem in our government. Simply put, we are not getting and we are not keeping the kind of people it takes to make government work. From Chairman Volcker and down through most government agencies, we have heard of nothing but frustration and confusion over how to recruit and retain the quality of people who can best carry out the programs important to every American.

Consider how the mood toward government service has changed over the years. People—young and old—once came in droves to Washington to join the Peace Corps and VISTA. Our top scientists raced to sign for our new space program. When the government decided that the environment was indeed important to our future, going to work on those problems became important and honorable work. Young law students actually looked forward to someday playing a part in the national fight against crime.

Well, those days are long done. Newspapers are now citing a survey that says that less than—46 percent—of our senior federal managers would choose federal service for a career, given a second chance. Instead of the enthusiasm we once saw, when people once asked what they can do for their country—they are now saying they cannot afford to do for their country. For too many people today, the price of public service is too high when compared to the offers and opportunities in the private sector.

We know that working for the government is not—and should not be—the road to riches, but the status of public service should at least be improved to the point where it at least has a fighting chance as a career option. Government has lost its competitive edge. We have to rebuild the image so that a government career will once again be looked upon as a place where people can use their talents in doing good work and be adequately compensated and appreciated.

Collectively, in the panel of witnesses before us today, we have an illustration of the mounting losses our government is facing. Between them, our witnesses decided what weapons our army would have, ran a government agency bigger than half the Fortune 500 companies, controlled the government's revenue collection in a major part of the country, watched over how our taxpayers' defense dollars were spent. We also have, ironically, a witness who was asked to come improve the lot of government workers, but could not afford to move here.

But as of today, not one of them is in government service. Their experience, expertise and integrity are no longer available to the people of this country. And, if these key players are gone, you have to ask yourself—who is left behind? And, how long will they stay before they face the same frustrations that have led these people to end their public service careers or decline to serve at all?

This is why we have saved these personal cases for our last hearing—to amplify the quiet crisis in our government. If we cannot keep the top quality people who actually run the system, the federal work force and the good works it can do are in danger of falling into mediocrity.

Our first witness today will be Dr. Robert Costello, well known to members of the Armed Services Committee and others as the former Under Secretary of Defense for Acquisition. And he has given us no written statement, and he also has a scheduling problem. We appreciate his generosity in being here today.

Bob, if you would proceed with what you would like to say, we can have a little discussion, and you can make that next appointment. Good to see you today.

STATEMENT OF ROBERT B. COSTELLO, FORMER UNDER SECRETARY OF DEFENSE FOR ACQUISITION

Mr. Costello. Mr. Chairman, it is a pleasure to be here. I think it is a critical issue, how do we bring the needed resources and the available talent in the country to focus and to bring that talent to bear on the issues that are so critical to the government.

My apologies, sir, for not having a written statement but, as you indicated, I am unemployed right now and only joining the Hudson Institute on June 1, and they are not used to writing testimony.

I thought I would like to take a minute or two to say why I joined the federal government and then make some comments on the issues that have arisen since then that I see as significant concerns.

All of us had read about the Packard reports, all of those of us in the acquisition area. I had the largest acquisition job in the civilian world running General Motors acquisition activities worldwide, spending someplace between $50 and $60 billion a year.

I was aware of the Packard study, the other studies in the Pentagon, and I literally had given no thought to joining the federal government until I got a call from the White House personnel office.

It was an exciting day in my life. I had talked to a lot of different people, but here was an opportunity to go to the government and apply the business background in a unique environment where my technical training and program management experience, my acquisition experience could be directly applied to a critical issue in the government.

I had a personal interview with Secretary Weinberger at that time and talked with him about the major issues facing the Department of Defense in acquisition. He described to me the job that was pressing them and said, "I would like to give you an opportunity to consider it."

I said, "Mr. Secretary, I have had 34 years in the Navy and Naval Reserve on active and inactive duty. I am a dedicated American. I want to serve. You have not given me an opportunity. You described to me an obligation as an American I must fill. I would be glad to come."

He reached across the table and said, "Welcome to the Pentagon, Bob."

There was some paperwork after that, but it was not in a situation in which we held everything in abeyance. It was an exciting challenge for a professional in the acquisition area to take on the largest acquisition job in the world and, yes, it was my ego that was involved. I wanted to be the first guy that had the two largest acquisition jobs in the world, General Motors and the Department of Defense.

I was concerned about it when I joined because I was not sure I would have as much of an impact as I thought would satisfy me. I was wrong. I had far more than I had perceived.

We had an exciting group of professionals. They were looking for some leadership, some direction. I had the opportunity to provide that leadership and direction for close to two and a half years.

There was a great deal of support from members of Congress, both the House and the Senate. I took as a challenge the opportunity to come over and testify on a variety of issues, and I was able to present a program that had some consistency to it and a steady level of improvement—no flags, no rockets, but a steady level of improvement.

We had some setbacks, program ill wind. Those are the kinds of the things that you look for when you do come to a job like this.

But now, why did I leave?

We are in a transition to a new administration. There was not a long-term commitment on their part for me to stay. There was a commitment that I made. I will stay until you find a replacement for me, and that process started in December of 1988. It is now May of 1989. Six months into the process as far I know they do not even have a man identified to replace me.

At the time when I said I would stay until somebody would be identified to replacement, I had been told by legal counsel that the new reauthorization of the Office of Federal Procurement Policy would not impact me. The revolving door issues related to that. An amendment to the bill relates to people personally and substantially involved with procurement. And there had even been some discussions when the bills were being put together that it would not apply to the members of the Defense Acquisition Board, and I was Chairman of the Defense Acquisition Board.

In April, though, the interpretation of the rule changed. And it said if you do not get out by the 15th of May, you may be in a position where you cannot go to work for anybody—or at least you cannot go to work in any area in which you have any specific kinds of knowledge. So, that said that I had to make a choice. Without a commitment from the federal government, the risk was all on my side. And my choice was to leave before the 15th of May or to be subject to the provisions of a new law that was intentionally fuzzy so there could be some interpretation. But the penalties were not civil, they were criminal. And criminal penalties for doing something that you do as a professional is a little bit overbearing, too great a risk for me to take.

With a little bit tongue in cheek, I was raised right outside of Danbury, Connecticut as a young fellow, and I did not really want to return to Danbury, Connecticut and spend my old age there because the federal prison happens to be in Danbury.

That is a serious concern. We have taken a position in which there are federal criminal penalties now that are very, very severe.

I was on a panel not too long ago that was talking about the same subject: Why do you leave? Secretary Laird, a previous Secretary of Defense was a moderator, General Herres who is the Vice Chairman of the Joint Chiefs of Staff was sitting on my right, Congressman Bill Dickinson from Alabama was sitting on my left. I was asked the same question.

I said, I am going to take it out of the personal. Here is a national resource General Herres. 35 years in the military, an outstanding officer, an outstanding professional, a knowledgeable technical man with an unusual background, and he may actually be forced to retire this year because he has had 35 years in service. They may make some exceptions, but suppose he is forced to retire. For the next two years he cannot use any of the knowledge that he gained to the benefit of this country.

I am going to join the Hudson Institute, a nonprofit organization. I could not join the Hudson Institute under the new rules. Therefore, we are wasting a resource and making it very difficult for senior professional business managers to look objectively at a job of this type.

I do not say that we did not have abuses in the past, but the constraints we are putting on people today are much too severe.

I have reviewed—I think all of us have reviewed the various segments of the Volcker report. In fact, I had a chance to listen to them, to Chairman Volcker speak at a meeting not too long ago, about a year ago when the report first came out and he touched on the major issues.

Pay is a key element, especially for younger people. Pay is not as big a key element to people that have a retirement program from a company or are very wealthy themselves. We cannot have a government that is run in the executive branch by retirees and very wealthy people. That is too small a scope, too small a part of the spectrum, and it is too limiting.

I know many people who have left government service in the last year. They have children going to college, and it is very difficult to send your children to college at Federal pay levels. Then there is a cultural shock when you come to Washington when you look at the question, that is fine. But what was your official title with General Motors to run their acquisition?

Mr. **Costello**. I was the Executive Director for Purchasing for General Motors.

Mr. **McCloskey**. I would assume that salary was multiple the salary you left, the ultimate salary?

Mr. **Costello**. It was several times what I was making when I came here.

Mr. **McCloskey**. I think it's true that the media and the culture at large has not really stressed or emphasized, or even mentioned that much, the sacrifices that their capable people do take to come in and make a third or a fourth or a fifth of what they had previously, and we need people like you and you are surely to be commended.

Mr. **Costello**. In addition to that, Mr. Chairman, I was also required to divest myself of all my General Motors stock and stock options.

Mr. **McCloskey**. You have been very, very recently a major part of the Pentagon, our Nation's military defense force structure and so forth, so without—and I'm really not trying to put the Administration or anyone in an embarrassing light, but we are hearing different figures. Anyway, different departments right now are 60 to 80 percent nonstaffed as far as permanent, key management positions at any rate. I heard a report that perhaps 18 people had not —would not seriously consider a particular position after being asked. Was that your position, Mr. Costello?

Mr. **Costello**. It was my understanding also. I think it is interesting at this time there are four people who have been confirmed by the Senate, four positions in the new Pentagon activity with a total head count in the executive level one through four of about 40.

Mr. **McCloskey**. I guess somehow the job always gets done, in a sense. I used to joke when I was mayor well, gee whiz, I am mayor. I do not know anything about utilities, plumbing or sewer systems but the water still keeps coming out so you know, therefore, life goes on. But is there a real sense of crisis over there? At some point, are we very likely to see more on-going critical foul-ups even than we have had?

Mr. **Costello**. I am concerned that you have direction, I will use the analogy, perhaps if the skipper on the Exxon tanker had been at his station they would not have ended up on the shoal with an oil spill and you are inferring, to a degree I think agreeing with me, that we need leadership at every level.

That was the largest business in the world that we were running. You cannot leave it without senior, direct personal guidance and the man in that slot, the person in that slot, has to be recognized as being the authority on an on-going basis and not a temporary fill-in.

Mr. **McCloskey**. Do you think there is a sense of crisis on the slow hiring and appointment rate right now over there? Is there a sense of crisis?

Mr. **Costello**. I had a sense of crisis before I left. I think there has to be a sense of crisis.

Mr. McCloskey. How much of a negative impact do you believe public scrutiny has had on people interested in high level positions? Obviously having to state practically every private or personl event, whether good or bad, and I might had the circulation of unconfirmed reports such has occurred in several highly publicized cases, is not an entirely pleasant experience. Do you think this has had a chilling effort on people considering taking senior executive positions?

Mr. Costello. It would not have had a chilling effect on me because for the security clearances you need for the job that I had you had to go through that anyway. It does have a chilling effect when you say, where was I in 1936? But I looked at that as part of the game that you are forced to participate in.

Mr. McCloskey. But speaking generically as to people who, having had your experience with security clearances in the military, could that make people less willing?

Mr. Costello. I think people have looked at the pile of paperwork and said no, it is not worth the effort. I know that for a fact because people have told me that.

Mr. McCloskey. Now you mentioned as you understand the rules and before getting to the question you are going to work for the Hudson Institute, which as I understand it is Indianapolis-based right now. Are you going to be a Hoosier?

Mr. Costello. My wife wants me to put this exactly the way it was. I chose that job because that allowed me an opportunity and a platform to work on industrial competitiveness on a broad base. It really had nothing to do with the fact that our grandchildren are only 16 miles away.

Mr. McCloskey. Where are they?

Mr. Costello. In Kokomo, IN.

Mr. McCloskey. Will you be living in the Indianapolis area?

Mr. Costello. Yes.

Mr. McCloskey. You said your understanding is, if those rules went into effect you could not accept a job with the Hudson Institute, in a nonprofit institute?

Mr. Costello. They happen to be the manager for the Center of Naval Analysis and they have contracts with the Defense Nuclear Agency. I have dealt with both of those activities and my knowledge would be valuable—I would not be able to talk with any of the people, basically, or give them any advice as to how to do their job better if I were to have waited and had the new law apply.

I am not going to solicit. I am not going to go out and sell. I refuse to be a lobbyist. I could undoubtedly be paid a lot more as a lobbyist. That is not in the best interest of the country or for me as an individual. But the country should be able to use my talent, understanding and the resources I developed while I was in the Pentagon, for sure.

Mr. McCloskey. I think that is something we are going to have to consider the concern you raised, the situation generally and also nonprofit organizations. Have you not made comments to the effect of the vagueness of the regulations that you saw coming down?

Mr. Costello. I have been concerned with the vagueness of the regulations. In fact, I would still be there if I had listened to the first advice that the general counsel had given me.

As they became more and more concerned about it and certain people in NASA raised the issue very strongly— Dale Myers was one of the people that had raised the issue strongly. Dale had come to me and said Bob, you better really take a look at the law.

There was intent apparently, when the law was put together to allow some interpretation. That puts a person in a very, very difficult spot and a company in a very difficult spot. We cannot afford laws that allow for a lot of interpretation.

Because I said look, you have to be able to tell the employee whether or not he is personally and substantially involved in procurement—and there was silence. You have to tell the company what these conditions are. Again, some silence, and literally I was advised that there would probably be a test case in the courts to define some of the limits as to how the law should be applied. That is unfair to the individual, especially because the charges—the penalties—are criminal.

Mr. McCloskey. Could you comment generally on working relationships between so-called political appointees and your career Civil Service cadre, as far as your experience? I guess you would be considered a political appointee despite your obvious management expertise. Are there any areas to improve in that relationship?

Mr. Costello. I believe in a concept of consensus management, so I involved the Civil Servants, I involved the uniform military directly in all of the discussions we had. So if there had been—and there were instances where there were obvious barriers in the communications between the different groups in the past, I think those were rather well destroyed because we had good communications across those lines. I can see, however, in many instances that would not be true. There would be barriers.

Mr. McCloskey. Do you feel you had the freedom to do your job?

Mr. Costello. I had an unusual amount of freedom to do my job and that is why I enjoyed it as much as I did.

Mr. McCloskey. Not everybody in your situation felt that way.

Mr. Costello. In fact, my predecessor felt he did not have any at all and he left. I may have looked at my job a little differently. I think the concept of consensus management was key.

I had talked with Dick Godwin who did a real outstanding job putting a structure together, but did not believe in consensus. He thought he really had to be a czar and dictate top down. I feel that in that situation you were not getting the participation and the support from all of the resources available.

In that office, with all of the defense agencies and all of the other people reporting to it, there are almost 120,000 people reporting directly to that office. It was an unusually challenging job, but it worked out to my satisfaction. It was just enjoyable.

Mr. McCloskey. Can you comment briefly on your views and those of your peers as to government compensation systems—pay, retirement, health? We always read how wonderful it is in the media and there are some good aspects to Federal service. How do you feel about those in contrast to the private sector?

Mr. Costello. I think for senior people in particular the pay is an unusual penalty. It does not make an awful lot of sense, perhaps, to pay a four-star general the same as a two-star general. There is not enough vertical separation in the job so that as people come up through the ranks they are willing to take on that responsibility, perhaps, even from a GS-15 to an SES job.

Because there are different involvements and different things that are expected of you. I think the pay also precludes a lot of the middle managers—some of the younger people—from even considering government service.

Mr. McCloskey. I do not have any other questions, Mr. Costello. I want to say thank you for being here today. You have been very helpful, very generous and I have a hunch we will be meeting at least several times a year in Indiana. That is wonderful.

Mr. Costello. Come meet with me.

Mr. McCloskey. I will be there soon.

Mr. Costello. This note says that I'm next up in three minutes, so I will have to leave, sir, to speak before Rep. Levine's "Wake Up America" caucus. Thank you very much.

Mr. McCloskey. Thank you.

Our next witness will be Dr. Harry West, former Deputy Comptroller of the Army. Dr. West?

STATEMENT OF HARRY M. WEST III, FORMER DEPUTY COMPTROLLER OF THE ARMY, SENIOR EXECUTIVE SERVICE (RET.)

Mr. West. If you agree I will submit my testimony for the record and provide some brief comments here this morning for your question and answers.

Mr. McCloskey. That will be fine. We shall proceed.

Mr. West. It is an honor and pleasure to be here today to share some personal and professional views on the National Commission of the Public Service.

My comments are really going to be brief, but they are from three different perspectives. The first perspective is that of a Senior Executive Service retiree, the second is an academician and the third is from the standpoint of an American citizen who is really concerned about the image and structure of the public service and its essential role it plays in the Nation's future.

I share something very fundamental with all of us here today I think, and that is the fact that we would really like to see positive change in the public service. We seem to be able as a group to bring that about and the Volcker Commission now offers us an opportunity for change.

My comments this morning are going to deal more specifically with structure and the framework in which that change will take place and I must admit I do have mixed emotions about being here this morning. In constructive debate one often has to point out some problems before he or she can get on to some of the solutions.

As a career Civil Servant for 25 years there is absolutely nothing more I could have ever asked personally or professionally from the system in terms of recognition, in terms of satisfaction and personal reward. There was not one more thing I could ask for.

However, during the last 12 years of my career I saw a number of things take place and substantive changes occur and for the life of me I cannot really think at this point of any of the proposed changes that dealt with substantive improvements to the merit system, the embedded merit principle, or the professional excellence of the career Civil Servant or the political appointee.

That is difficult to say, because in one breath—as I say, I have mixed emotions—I feel as though I had the best of everything in the system, but the system did change while that was going on. I must indicate that this is not a satisfying thing to say, but however it must be said in order to get on with some of the solutions.

There is one exception to what I just indicated. In the 1978 Civil Service Reform Act, we had placed in that act a major change in performance appraisal in the public service. I come away with that as one of the major exceptions to the previous statement I made about the declining image and respect of the public service.

I think we did a good job in that area and all of us, from unions, to this Subcommittee, to many aspects of the Executive Branch—OPM, leaders, workers, supervisors, everyone alike, we all did a relatively good job in that area.

The complexities are there, of course. We do get some criticism about complexities. But we did do a relatively good job, so that is the one exception to my comment on image.

It does seem inconceivable to me that we are, as a Nation, debating something less than a first-rate public service for our Nation. It appears as though we ought to be looking and seeking the very best for the two million plus career Civil Servants that we have, administering some $1 trillion a year, reaching out and touching all Americans somehow, somewhere, some way, whether or not that individual might be simply preparing social security dividend checks, trust fund delivery checks, biomedical research, or any of the other myriad tasks of the Federal Government.

We must have excellence throughout that entire public arena, and if you take the two million employees and divide them into a $1 trillion budget minus the trust fund distributions, in an average sense each public employee reaches out and touches—and they do—$500,000 a year. That is a major national resource that each employee simply on an average basis reaches out and touches.

Unfortunately we do not seem to be achieving the goals that we are looking for in terms of the goal of the public service. We are sending a lot of negative and long-term signals to both people that will potentially join the service as well as those people out in middle America who read about us.

I cannot really be impersonal on a couple of these issues. In one case, a little more than a year ago on January 5, 1988, I was invited to the White House to be given a distinguished public service award by President Reagan.

Unfortunately that very week there were two articles, one by the Associated Press and one by the New York Times dealing with the decline of the public service. It was very difficult for me to walk back to my office and very difficult for me to in fact see my friends and neighbors.

Most people knew about the award. There was publicity about the recognition. But I had a feeling, throughout this whole area of time in my career, that people were giving me good-natured kidding while I was a product of that second-class system that was being commented about in the newspapers.

Needless to say, I distanced myself as quickly as I could from the public recognition. I felt that I did a good job. My peers and people in this room would understand whether or not you did a good job. But there are 240 million Americans out there who are getting a lot of negative signals about the public service and it just, as in my personal case, happened to all coincide with that one very important week in my own career when I did receive the Distinguished Executive award from President Reagan.

Now, the issues then really deal with how we are going to make a positive change to the service. Please understand that I really am honored by all the recognition that I received in my career and that is not the issue. The issue, however, is how we change the image and respect for the public service and how we establish a structural framework to do that and build improvement over time.

A recent book that I picked up to just prepare some thoughts for this session, entitled "Workforce 2000: Work and Workers for the 21st Century," the authors do a very good job of running America through a series of national, economic scenarios and the fundamental conclusion of that book is that our national workforce is the most valuable asset we have to carry America on through to its national goals—not just economic goals, its national goals.

I think the same is very true of our public service. I cannot think of another group of individuals that are as key in that equationas our civil service, they are—not mentioned in that book. So we leave a hearing like this, or the Volcker Commission on the Public Service to bring those issues up. We need to get them, on the table.

The recommendations of the National Commission on the Public Service are the issue this morning. That is what your hearing is about. I really do respect your time and the other Committee members' time on this issue. I know that this the last in a series of hearings and in all honesty, to all assembled, I believe that the Volcker Commission ball has stopped in this court and that someone has got to stand up and be responsible for the implementation of the Volcker Commission results.

Now a commission is an excellent forum of our government to arrive at consensus—Dr. Costello mentioned that; he and I have worked together on a number of issues in the past—and arrive at other conclusions, solutions. Commissions are probably one of our worst institutions for implementing any of the results of their own work.

I mention that because I think we are at that present stage on the Volcker Commission. The question is, who is going to approve the key findings of the task forces and the 15 goals of the commission? If we ask that question and no one stands up, I think we have a structural or framework dilemma-that is facing us to improve that image and to satisfy the major issues that Dr. Costello mentioned like pay and compensation.

Now, getting back to 1978 again. The Civil Service Reform Act did a number of things that strengthened the personnel management process of the Federal Government and did them very well.

The establishment of a single-headed Office of Personnel Management was an excellent move. I participated in part of the work on that legislation. The second major change was the Merit Systems Protection Board to protect our merits principle and system. Again, an excellent quasi-judicial activity.

Now, we have done such a good job of implementing both of those we have lost the framework and structural process of the old Civil Service Commission so we have no means by which we can go about the process of introducing positive change in terms of public policy formulation, because the commission is no longer there. By definition OPM and by definition the Merit System Protection Board have other functions. So again, we are left to an excellent forum like this to introduce these changes.

What are the next steps in introducing change? Well, I think we have some issues that are on the table today—pay and compensation, image, respect and so on—I have difficulty dealing with all of those on an issue-oriented basis. They are part of a larger system and therefore I am going to make a recommendation that this Committee give careful consideration to the creation of an independent, bipartisan commission very much like the old Civil Service Commission to establish the structural framework to deal with all of the issues in a total system sense.

That independent bipartisan commission should have as its first task the implementation of the Volcker Commission findings. It is very difficult for any committee of the Congress to administer the implementation of findings as important as the Volcker Commission.

I would suggest to you, if you would consider that first recommendation, that there are two others that should be also considered simultaneously, and one deals with the issue of how we manage the civil service. That is, consideration should be given to the development of a national research program, which we do not have and the Volcker Commission is silent on.

I came up through my 25 years of government working primarily for the Navy and the Army and you know, we know more about a recruit that we are going to bring into the Army prior to recruiting that individual than we do the professional civil servant entering their career service as a Grade 7 or 9.

The reason we know more about that recruit is because they are recruited for a specific need. There are projections made about the future. We determine how he or she will fit into the system and what their opportunities are. We recruit them, we train them, we develop them, we retain them.

We do not do that in the career service. They are able to do that in the military system because they have a research base to operate on. We do not. We really use a lot of extraneous data in describing the issues of the career service.

Therefore, the second recommendation is a formal, institutionalized, Federal research program dealing with the manpower and personnel body of knowledge, in terms of why the five of us are sitting here at this table. We get quoted a lot as to why we left or why we stayed. There really is not a good basis of research upon which to make decisions and establish a public policy.

A third recommendation to deal with the issues would be to establish something that would be called a national plan for the next decade, or for the year 2000, for the career service.

To remove from the negative images of the minds of Americans what our service is all about, I think we have to lay out a formal plan by which we can measure our progress to obtain excellence in the public service where it is weak, establish issues along the way like pay and compensation, like scholarships, like development—and the Volcker Commission deals with those issues.

But we do not have a plan today. If you were to be asked, or if I were to be asked, what is the next step on the Volcker Commission, or what is the plan for the public service? How do we achieve excellence when—how do we improve those areas? We would not have an extremely good answer to provide to Middle America.

There is no question in my mind that change will come to the current system; that the Volcker Commission and your hearings and the current debates are all going to serve a very important purpose.

However, we cannot let "issues" be the only thing that we deal with. We have got to deal with the total system, the total structure and the total framework within which the public service must fit and therefore those recommendations that I make are really oriented towards the structural framework to provide the issue orientation within the total system like pay and compensation, like image and respect, like professional excellence, and so on.

Mr. Chairman, that concludes my formal comments. I would be happy to answer any questions you might have.

[The statement of Mr. West follows:]

STATEMENT BY

DR HARRY M. WEST III
SENIOR EXECUTIVE SERVICE (RETIRED)

It is my honor and pleasure to be here today to share some personal and professional views on the National Commission on the Public Service. My comments will be brief and will be expressed first as a Senior Executive Service retiree, secondly as an academician, and thirdly, as an American citizen who views the Public Service as essential to our nation's future.

I share something very fundamental with you today and with all others assembled in this hearing. We all agree on the need for positive change in the Public Service but we seem to be unable to bring about that change in a positive and constructive manner. My testimony will deal with this issue and hopefully will provide a framework for constructive change.

I must admit, I have mixed emotions about this hearing today. From one standpoint, the merit principle embodied in our public service today has served me as an individual extremely well. Under no circumstances could I have asked for more from a federal career from the standpoint of opportunity, reward or satisfaction. However, from another perspective, the image, respect, pay and compensation inherent in our system have changed rather dramatically over the past twelve years. I can't recall any substantive changes that were proposed or implemented that were specifically designed to enhance the merit principle, improve the merit system or increase professional excellence. This is not a satisfying statement, but I believe if you were to ask the question of current employees, you would get almost the s⁻me answer.

There is one exception -- the excellent work done following the 1978 Civil Service Reform Act on employee performance appraisal at all levels of the public service. I would suggest that all of us---- workers, supervisors, leaders, The Office of Personnel Management, the Congress, unions and the private sector can in fact take pride in the changes in this function of the public personnel management process. We must now exert those same energies on the remainder of the public personnel management functions to bring about positive change through a structured and institutionalized framework.

It seems inconceivable to me that a nation such as ours should be considering anything less than a first-rate public service which can be depended on to carry out the programs of our national government. In fact, the national government should serve as a model for state, local and municipal governments. Ir one form on another our federal workers spend, oversee the expenditure, or advise on the expenditure of one trillion dollars annually. In this regard, I consider all employees in the public service even those that have been permitted to have separate personnel systems to improve their operational effectiveness such as the Postal Service, the TVA and other selected elements of the three branches of government. They all consume some portion of the annual budget of the United States and are all in service to the nation. The public service is a service in which I would want the most professional, the most capable and the highest respected merit system. It not only supports them but the nation they are serving. It makes lettle difference whether they are processing a social security claim, conducting biomedical research or providing regulatory controls for a safe and healthy environment. We should expect the best but we must be prepared to provide a first-rate public service system.

Unfortunately, these do not appear to be the goals we are achieving in our present system. We are sending entirely too many negative and misleading long-term signals that we must correct immediately. I simply cannot be impersonal about this issue since it influenced me greatly and others serving in the Senior Executive Service and the Merit System as well. On January 5,1988, I had the distinct honor to be granted the Distinguished Executive Service Award by President Reagan in a White House cereony. On January 8, 1988, the Associated Press carried a nation-wide article entitled "Volcker Sees Flaws in Civil Service". The New York Times that same day carried a story entitled "Is the Quality of the Federal Workforce Deteriorating?" Needless to say, I took a good deal of good natured kidding from my associates and friends regarding the bonus associated with the award. In their view the system was perhaps in difficulty but I was getting an award for second class work. That was not the case and others associated with the system know that was not the case, but we are a vast minority among the 240 million Americans who read the headlines regarding the public service. The bottom line for me was to quickly distance myself from public recognition associated with the award as soon as possible. This experience caused me to question whether my own public service record was viewed as an asset in the private sector or whether some look at these records with little respect. The answer to that question was never determined but others in the public service are wondering the same thing. We are all concerned about the way our nation views our service and I am not convinced this is easily resolved. The increased awareness associated with the problems of the civil service raise questions in the minds of Americans and we do not seem to be sending the answers to their questions in any positive manner today.

Please understand I am very honored by receiving both Presidential rank awards and six other honorary awards during my career. However, I was one of many who weighed the image and compensation of the public service and I decided to accept early retirement at an early age. I made this decison for some good and for some bad reasons as I see it today. By in large, the low image and respect for the public service and the way in which pay and compensation issues are handled in the public policy process are the two largest. Image and respect will take a decade to improve. Pay and adequate compensation offer short-term solutions but they are not independent of image and respect. Americans must understand why members of the Senior Executive Service deserve more compensation. Today, they do not understand even with the comparative analyses with the private sector. The Volcker Commission includes many initiatives in this area.

BUILDING TOWARD A DECADE OF IMPROVEMENT

In a recent book entitled WORKFORCE 2000: WORK AND WORKERS FOR THE 21ST CENTURY, the authors do an excellent job of analyzing America from a world economic viewpoint through several scenarios. They demonstrate how invaluable the nation's workforce is in achieving our national goals. In fact, they raise many issues which are severe private sector problems but they are addressed in a positive manner. They indicate that "....if nothing is done to focus our national attention and actions on these issues, they will likely be unresolved at the beginning of the next century. By addressing them now, the nation's decision makers can help to assure that the economy and the workforce fulfill their potential by the year 2000." My appeal is similar to you and your members today. Many of the issues are the same in the public service with complex and costly solutions but all are well worth implementing relative to the return on the investment.

THE RECOMMENDATIONS OF THE NATIONAL COMMISSION ON THE PUBLIC SERVICE

This hearing today is one in a series conducted by your committee to deal with the complex issues of the Volcker Commission report. I appreciate the time the committee is taking to determine what actions should be taken to implement the findings of the five Task Force Reports. The question is -- what should be done, by whom and who is in charge of the planned implementation of the Volcker Commission findings? The history of the Volcker Commission is useful to develop an answer to these questions. The American Enterprise Institute and the Brookings Institution jointly sponsored a symposium entitled 'A National Public Service for the Year 2000'. We are today participating in the public policy process following both the symposium and the commission reports and the agendas both produced. It appears as though the ball now stops here in your court.

While I have my own views about both agendas, I certainly support all fifteen goals of the Volcker Commission. Let me take one liberty and offer a criticism of our 'commission style' of public policy formulation in our nation today. A commission is an excellent means to develop consensus on complex issues, to develop agenda for resolving problems and to analyze alternative solutions. A 'commission' is however one of our least capable institutions for getting anything accomplished after their excellent work. Even with the first and second Hoover Commissions, there was great difficulty in implementing the findings. Today, we have arrived at better conensus, in my view better solutions, but we have virtually no established framework at the national level to carry out the Volcker Commission recommendations.

I might ask the question—who has approved the commission's recommendations? If no one accepts that responsibility, we are already in a dilemma and we haven't even completed the debate on the issues. This issue is probably at the core of why we are all here today.

In 1978, we implemented the Civil Service Reform Act which most of us here today fully supported. We believed it was necessary to strengthen the public personnel management function of government while at the same time preserving the merit principles upon which the merit system is based. We did that by creating the single headed Office of Personnel Management and the Merit Systems Protection Board and Special Counsel. These changes proved effective in separating the internal conflicts between the 'operational' and 'adjudicating responsibilities' of the Civil Service Commission. This was a valuable and important step in institutionalizing both important functions in the public personnel process. Unfortunately, we accomplished our objectives so well by creating OPM as the personnel manager and the MSPB as the quasi-judicial adjudication authority that we lost the policy formulation framework inherent in the Civil Service Commission. No nation, in my opinion can have a successful civil service without the public personnel policy formulation fraamework that we lost in the 1978 CSRA even with all its important reforms.

NEXT STEPS IN IMPLEMENTING THE FIVE TASK FORCE RECOMMENDATIONS

I am not sure whether any of my colleagues know exactly what to do with the Volcker Commission Task Force recommendations. I have discussed this dilemma with people who are working the "issues" within the context of the larger system, but most of the issues are vulnerable to interest group pressures. At this point three recommendations might offer some opportunity in gaining the benefits of the Task Force recommendations and not simply letting those recommendations serve individual interests at the expense of the larger system.

RECOMMENDATION ONE

I would recommend that you give careful consideration to the creation of an independent bipartisan three member commission to provide the framework for public personnel policy formulation. This commission should be first given the task of implementing the findings of the Volcker Commission and then be structured to provide the institutional structure to develop and implement public personnel policies after appropriate costs and benefits are developed and reviewed by OMB, GAO and the CBO and then forwarded to the congress for debate and finally included in the authorizations and appropriation processes. Through a structure similar to this, we can determine exactly the type of public service we want in the year 2000. In addition, we will have a structured framework to take the first step which is to begin the implementation of the Volcker Commission findings. This approach will permit us to develop a deliberate approach to achieving selected objectives by the year 2000 rather than arriving without the problems resolved.

It appears as this might be our only way to deal with issues like pay and compensation, image and respect and other problems within the system today. The 'quiet crisis' was anything but quiet during the early months of this year. With image and respect down, any well intended request for a salary increase was in difficulty because it was considered outrageous by most Americans. Unfortunately, we walked into the pay and compensation issue without our 'total system policy' homework done and the issue was rejected.

One of our primary problems with the lack of a bipartisan commission is that we lack the 'total system' perspective and therefore we became issue driven to make changes. It is my view after observing, studying and participating in this process since 1963 that we must make a structural change for the better of all involved. We have permitted 'issues' to invade the very fundamentals of the merit system and the merit principle itself. For example, Gramm-Rudman-Hollings, the size of our national debt and outlay controls have all limited civil service salaries, may potentially reduce COLA's to retirees, have taxed lump-sum distributions and even now there is talk of removing lump-sum distributions for those retiring in 1990. While the issues are extremely important national issues, they erode the very basic nature of our merit system and the 'merit principle' in the manner in which they are analyzed and implemented.

Today we have permitted too many external issues to take their toll on the merit system. The private sector seems to be able to cope with similar if not identical issues. In fact, in a recent issue of Business Week which was dedicated to the subject of' human capital", the question was asked, can we afford to make the necessary investment in people? The answer was "....we have no choice". As we know there are always choices but disinvesting in the public service is the wrong choice and we have been sending the wrong signals to America for the past 12 years. There is a reinvestment that must be made to make up for the deficit created and additional investments to be made where we consider appropriate. Even if we start now with the Volcker Commission findings there is a long track to recover and to make significant contributions to the future of the public service.

RESEARCH IS NEEDED

Our nation knows more about the need, value and contribution of a high quality Army recruit today than it does about a college graduate entering the merit system. The requirement for Army recruits are modeled and projected by skill, paygrade, attrition, bonus program and so on. Soldiers are then recruited by specific category to meet those needs. The reason this is done successfully is because it is part of a larger 'total system' of personnel management. In 1980, the Army was recruiting 60 percent of its new accessions with high school diplomas. Recently that percentage was about 94 percent which was achieved in 9 years. Any system can accept a challenge like the Army was facing in 1980 and I am convinced we can do the same in the public service.

The essential roles of research have not yet been defined in the Volcker Commission report. Military personnel research led the Army to understand how soldiers respond to recruiting, placement, training, relocation, and other personnel management activities. Once determined, the Army built a total personnel system to mutually meet the needs of soldiers and the Army. As a result, image and respect improved dramatically, indiscipline decreased and invested resources provided more return. Research played the initial and vital role in providing the Army successes. The same would be true for the public service.

RECOMMENDATION TWO

Should the congress accept the initial recommendation on the establishment of a bipartisan National Public Service Commission, consideration should also be given to the establishment of a National Research Program administered by the Commission. This would cover all functions of public personnel management from recruitment, selection and training through development, performance appraisal and equal employment opportunity affirmation action programs. Through the body of knowledge developed, this federally funded research program would take the first step in defining our requirements and how the system interacts with the public policy formulation process in the public service now and in the year 2000. Research plays a central role in this process and unfortunately too little exists today and therefore issue oriented rhetoric takes precedence.

RECOMMENDATION THREE

In order to overcome the image and respect issues, I recommend you consider the establishment of a national plan to achieve excellence in the public service covering the next ten years. This national plan should be submitted annually by the National Public Service Commission to the Congress with additions, deletions and recommendations. This national plan would be a product of the public and private sectors responding to guidelines established by the congress. This evolutionary plan would establish time schedules and objectives by which interdependant action across government and the private sector would be accomplished. The plan would be to include research findings, congressional oversight objectives and would place time lines on each of the Volcker Commission's 15 goals. Most importantly, the plan would develop indices to measure progress toward each goal no matter how long it takes to accomplish.

SUMMARY

The Volcker Commission is an excellent 'first' step is regaining and achieving excellence in the public service. An important 'second' step is to design and implement an Independent National Public Service Commission to provide the implementation framework for implementing the Volcker Commission findings. This commission can prepare much of the work associated with public policy forrmulation in the Legislation and Executive Branches. This would fill the void created by the 1978 CSRA which properly strengthened the Office of Personnel Management and established the Merit System Protection Board buy unfortunately, reduced the necessary policy formulation and implementation framework required today to carry out positive changes in the public service.

A 'third' step recommended is to establish a federally funded public service research program to provide the body of knowledge necessary to support the public personnel process.

A 'fourth' step recommended is to develop a forward looking positive plan to improve the measured excellence of the public service.

These recommendations would accomplish two objectives simultaneously. First, they will provide a framework for positive change through the Volcker Commission and, second, they will permit us to attain the type of public service we need.

THE FUTURE BELONGS TO THOSE WHO PREPARE FOR IT

Exactly three years ago Charles Levine and Bernard Rosen authored two articles dealing with the role of the federal government service in the year 2000 and on the crises in the Civil Service. Three years ago we may have questioned their outlooks, but today their views are vividly present. Before we go too far afield on issue oriented actions, we should decide exactly what we want the role of government to be, how the career civil servants and political appointees fit into that equation and most importantly how we can achieve the highest degree of professional excellence in our civil service. It is never too late to begin this plan for the future, It has three basic ingredients which will make it succeed:

1. The establishment of a three member bipartisan National Public Service Commission to provide structure for sensible policies through both legislative and executive actions.
2. The establishment of federally funded research programs to better understand how public personnel policies will influence the two million plus public service employees today and likely in the future.
3. The establishment of a national plan to achieve

excellence in the public service. It should be good enough to be sought by IBM and General Motors since two million employees overseeing one trillion dollars deserve no less.

Changes to the current system must and will come. The Volcker Commission, your hearings, and the current debates provide an excellent starting point for preparing the future. Without such an initiative, the Commission's excellent work will be left to issue oriented implementation which meets special interests. Somehow we must go beyond this situation and provide some structured framework for the evolution of the public service. This concludes my prepared statement. I would welcome any questions you might have at this time. I will be followed by several colleagues who will provide additional viewpoints associated with their recommendations on the Volcker Commission.

Mr. **McCloskey**. Thank you. My introduction to you was very brief, but it is obvious from your statement and some of the events you narrate in your statement, you are truly among the top cadre of civilian personnel in U.S. history, but these awards for which you felt some ambiguity which I think is unfortunate because you have every right to be proud. You are the recipient of the DOD meritorious civil service award, the President's meritorious Senior Executive Service award in 1985, and the presidential distinguished award in 1988, and that is truly to be commended and something to be very proud of.

I am going to have Mr. Gilman introduced and make a statement in a moment and then I want to follow up with some more detailed questions as to the specific recommendations that are very substantive that you are making, but I understand your reason for leaving involved pay, image, and respect for public service.

Could you elaborate on that a little bit? Was there one incident or a series of incidents that kind of became the final straw or was this something that built up generally over many years?

Mr. **West**. There was not a final straw, no. And as I said in my prepared statement, I made a decision to leave for some good and some bad reasons.

The theme, however, was that a number of things were occurring over time that a lot of us did not like to see happen to the system. The decline in respect, the decline in image, the way in which pay and compensation issues are handled in the process today embarrasses a lot of people. It is hard to go back to your friends and neighbors in your hometown and see the issue of pay debated the way it is in front.

Now, it is an open society, with a democratic process which opens questions. But when it gets so involved and the issues are so volatile, that in my way of thinking is not the way to handle the merit principle embedded in our merit system. Equal pay for equal work is the way it was started in the Pendleton Act in 1883. Any resemblance to that today in pay setting, in the compensation setting in the public service is purely coincidental. That is unfortunate.

Mr. **McCloskey**. Thank you. We are honored to have Mr. Gilman with us today.

Mr. **Gilman**. Thank you, Mr. Chairman, and I welcome our witnesses appearing before this in the last of our series of hearings on the report of the National Commission on Public Service, and we certainly welcome your recommendations.

Dr. West, I was particularly interested in why you are suggesting we go back to the independent bipartisan three-member commission that we abolished when we reformed the civil service system because they were not doing such an effective job.

Mr. **West**. They did an effective job in one way. That is what we actually lost in the abolishment of the commission. They did an effective job of representing the public service and bringing those policy issues in through the executive branch through to the legislative branch.

Mr. **Gilman**. Forgive me for interrupting you, but why cannot OPM do that kind of work?

Mr. **West**. The charter of OPM and its primary purpose is to be the personnel managers of people for the Federal Government and to operate the personnel system. It does not represent the clientele of that system.

Mr. GILMAN. It would seem to me, though, that OPM has as its objective to make our work force more effective, more productive, to make certain that there is harmony in the work force, and if there was something constructive that was needed that OPM would have the ability to come forward to recommend that.

Mr. WEST. Well, they do not because, as you well know, Mr. Gilman, as an executive branch agency, it is first and foremost responsible to the executive branch in terms of what it can or cannot do, and it truly does not have the independent bipartisan opportunity to bring forward issues and present them in the way that the old Civil Service Commission could.

Now, the old Civil Service Commission was, in fact, slow. I admit that. However, most of the critiques after ten years now have been relatively good about the structural framework and as an academician and going back and studying that framework, it was a good framework.

If we could figure out a way to put that framework into an executive agency like OPM and have its opportunities be carried out, then that would be fine. But I do not think under the Civil Service Reform Act of 1978 and what we did to improve OPM, which is excellent, that they can be saddled with that task.

Mr. GILMAN. It almost seems like from what you are suggesting that there might be a commission sitting above OPM to do the independent type of thinking, and we hope it would not have to create a whole new agency to try to implement that kind of suggestion.

Mr. WEST. I do not think you are talking about a major staff here. I think you are talking about someone who would be responsible for implementing the Volcker Commission findings dealing with public policy issues and public personnel management, those things that are developed in a public policy sense.

Mr. GILMAN. You commented that you wonder what is going to happen to the commission report. That is why we have been conducting these hearings. We hope that we are going to be able to implement some of those constructive suggestions that come out of the report. The first battle will probably be over the whole salary structure and how we are going to handle that still remains to be seen. We have taken a great deal of worthy testimony in that direction, so I do not think we are going to allow it to gather dust. A lot of good work has gone into the report and a lot of work has gone into conducting hearings on the report. We hope we are going to be able to implement some of these worthy recommendations.

Mr. WEST. I commend that.

Mr. GILMAN. Thank you, Mr. Chairman.

Mr. MCCLOSKEY. Thank you, Mr. Gilman.

Dr. West, I thank you. Is there anything else you would care to add? With Mr. Gilman's questions, I think things have been covered.

Mr. WEST. Mr. Chairman, I am satisfied. I think I have added as much as I can in the time available.

Mr. MCCLOSKEY. Thank you for the excellent testimony. We will take that into account.

Our next witness will be Dr. Thomas A. Cardoza, former Regional Commissioner of the Internal Revenue Service.

STATEMENT OF THOMAS A. CARDOZA, FORMER REGIONAL COMMISSIONER, INTERNAL REVENUE SERVICE

Mr. CARDOZA. Good morning, Mr. Chairman. I am honored to be here today, and I had planned to restrict my comments to compensation and thus had prepared a very brief statement that I would like to read into the record and then proceed with any questions that you might have.

Mr. McCLOSKEY. That is fine. Please proceed.

Mr. CARDOZA. "The success of this government, and thus the success of our nation, depends in the last analysis upon the quality of our career service. We are all dependent on their sense of loyalty and responsibility as well as their competence and energy." President John F. Kennedy's words, given 27 years ago, reflect an era of price in government when the prestige of federal employees ran high and employees considered it an honor to work for the Federal Government.

Twenty-seven years later many disillusioned career employees, civil servants, puzzled by the lack of respect and appreciation for their contributions and little in the way of any comparability with the private sector, are leaving, considering leaving, or for those who have served many long and dedicated years, simply retiring at the first opportunity from federal service.

I am very pleased and honored to be here today and to offer my comments on the report of the National Committee on Public Service and especially on something that has been and remains very important to me, federal pay, and especially the compensation to our Senior Executive Service members.

In preparing my statement, several old sayings kept coming to mind, but fortunately I discarded most of them. I kept two that I believe are important. They are "you get what you pay for" and "you reap what you sow."

I will expand on these later, but getting immediately to the point, let me begin by saying that I personally and professionally wholeheartedly concur with the recommendations of the National Commission on Public Service chaired by Mr. Volcker and the testimony previously given by Ms. Bonasaro of the Senior Executive Association.

I retired May 3, 1989, after more than 34 years with the Federal Government. 32 years of that with Internal Revenue Service and two years served proudly with the U.S. Air Force during the Korean war. My decision to retire from federal service was a very difficult one. It was not based solely on pay, but I want to say up front that if the pay raise for federal executives and judges recommended by the Quadrennial Pay Commission would have been approved, I would still be the IRS Regional Commissioner for the Southeast Region, and I would have definitely remained with IRS in an executive position for at least 3 more years.

The thoughts of retirement and actually leaving something which has been so much a part of my life provided me with a little time for reflection. Upon the announcement of my retirement I heard from friends, acquaintances across the country. It made me look back to the good old days. Unfortunately, we only remember what we want to remember about the good old days. I certainly would not want to go back to the way we did business in the good old days.

However, looking back, I realized the wealth of experience I have gained and the fact that I was well trained as an IRS executive, having received excellent opportunities for development including completing Harvard's advanced management program, and I was a graduate of the IRS executive selection and development program.

I have seen the way we do business change so much in keeping up with the technology and culture of today. I was glad to be a part of it, and the sad thing is that I still could be. I am a 57-year-old executive and have spent my career extremely active in the management of the Internal Revenue Service.

I have been recognized for this in numerous ways to include receiving a presidential rank award. I have managed change, a divergent work force, expanding technology, and the way we do business with our customers.

I can safely say that all this will not be wasted as I look forward to challenges ahead, as I will be applying this breadth of executive experience in the private sector.

The sad thing is that I look around and the same thing that was happening throughout the organization, two of my former associates come to mind. They both recently retired from IRS with more than 30 years of service each. They held Assistant Commissioner positions as our national office in computer services and taxpayer service and returns processing. They both are at the top of their fields and as they leave, so leaves a wealth of knowledge and experience in a very critical area.

In my region of 19 SES executives, I was one of two who announced retirement and as many as four more probably will retire before the end of the year. Nationally in IRS alone 56 of the 224 SES executives qualify for retirement. I expect the majority to retire within the next 12 months. Would they if comparability pay raises and compensation were provided? The answer I think is an unequivocable no.

Well, there are some—and I have heard them on T.V. and radio—who might say that this is good for an organization as it creates opportunities for others to advance or enter the Senior Executive Service. That has not been the case.

In fact, we have a problem in keeping our mid-level managers within IRS. Why should a mid-level manager go into the Senior Executive Service when he or she hears horror stories from those in SES retiring or contemplating retirement who talk of years of pay comparability studies that have seen no action who now talk of personal sacrifice that outweighed their reasons for staying in government: dedication, loyalty, and pride, who talk of losing from $5,000 to $40,000 on personal moves and finally the plain economic reality of the disadvantages of a mid-level manager moving into the Senior Executive Service for basically the same pay and being subjected to uprooting family and moving for substantially no gain.

Consequently, we are having difficulty ensuring that our most capable first line managers move along and that our top mid-level managers become our top executives. Will we be getting qualified people to fill behind the senior executives leaving the service now? Would we if the areas identified by the Volcker Commission and particularly the ones in compensation and pay were enacted? I believe the answer is yes.

I opened with a quote from John F. Kennedy, and that was certainly a benchmark for Federal employees. It was a time of pride in the federal service and hope for the future. It was also the beginning of many administration's acknowledgment that something needed to be done in the federal pay comparability.

Each year, each year thereafter I have seen pay increases based on comparability rejected by those administrations and a token pay raise substituted. As a result, over the last two decades the gap between comparability and actual pay has grown from between 37 percent to 50 percent for executives.

Finally this year when right up until the 11th hour it appeared that a significant part of the pay gap would finally be closed, Congress once again disappointed us.

In conclusion, I would like to go back to my two old sayings. One, "you get what you pay for." In order to have the best, highly qualified people enter public service, we must ensure that public service is an attractive, rewarding profession.

In order to keep them and to have them the most qualified, best mid-level managers move into Senior Executive Service, we must again pay them. This must be the form of action and not words.

Many of us ending our federal service careers have waited as long as we could and can wait no longer for those promises to become reality. "You reap what you sow." Thank you.

Mr. McCloskey. The Volcker Commission recommends ending a number of the SES bonus awards in order to make it more clear that the awards are intended to recognize superior achievement.

During your years in the Senior Executive Service, what was your experience with the bonus awards program? Do you support the Commission recommendation in that area.

Mr. Cardoza. I said earlier that I wholeheartedly supported the Volcker Commission report. In this one area I do not.

First, I must say that my personal experience with the bonus system has been very rewarding—I have been very satisfied and pleased, because I received a bonus every year.

But as an executive who had subordinate executives, I found that it was inadequate in two ways. It was inadequate in that the coverage was not as broad as it should have been, and that the funding was not what it should be.

In other words, greater funding should be provided, more bonuses given—I did a study a few years back of some private industry bonus systems. And this one, as you know, we had a limit of some 50 percent, initially, and then there were some agency limits that were put on that were tighter than that—down to 35 percent.

But what we found in private industry is, it is not unusual for the people in the bonus pool, 80 percent of them would receive bonuses. The bonuses would range from very large, for the people that are doing the most and having the greatest impact, down to a lesser, amount, where you could still recognize the person for the job they are doing.

Not everyone got bonuses, because everyone does not deserve bonuses. But more than 35-50% of our executives are deserving of financial recognition.

But that a system like that, rather than what I see in Volcker is trying to work with the dollars that are there, and come up with meaningful bonuses for a few people.

The way we administered ours in IRS we did have meaningful bonuses for a few of our people, but not enough.

Mr. McCLOSKEY. Now, I would assume, Mr. Cardoza, that you are probably gainfully employed at this point? Would that not be correct?

Mr. CARDOZA. No. I retired three weeks ago, and I am having a lot of fun resting, and at the same time, talking to people that would like me to go to work for them.

Mr. McCLOSKEY. You see some opportunities coming, equal or better, to your governmental salary, I am sure.

Mr. CARDOZA. Yes. I have been talking with people; most all of them are six figures, and that is not a major problem.

My decision is going to be, what do I really want to do?

Mr. McCLOSKEY. Well, not that it is that pertinent to today's discussion, but will it likely be a law firm, or just what natural career transition would you make?

Mr. CARDOZA. Well, the conflict of interest rules that were applied to before, I am having a little problem with that, because for 12 months, I cannot talk to anyone in Internal Revenue Service about a tax matter—a taxpayer's tax matter.

And for a law firm, or an accounting firm, that is a pretty important thing. So in order to hire me, what they have to look at is underwriting my expenses for 12 months, with very little in the way of payback to the organization.

Now, there are some that are willing to do that, but at the same time, it is a major hurdle. That is brought about by the conflict of interest rules that were previously in place.

Mr. McCLOSKEY. So, are you a lawyer and a CPA, then?

Mr. CARDOZA. No, I am not. My background is an accountant. But I can work in that work.

Mr. McCLOSKEY. I see. But you cannot approach the IRS for a year then as the regulations go right now?

Mr. CARDOZA. That is right.

Mr. McCLOSKEY. Could you cite some specific examples of some—I think you have in passing, but elaborate on some innovations that you achieved—just to give our record an idea of the possibilities and the quality of innovations that could be lost under early retirement?

Mr. CARDOZA. Well, I think first of all, let me say that along those lines, is that the people that are retiring, these 56 people that I mentioned, will probably go within the next year. They will be replaced, but they will be replaced with people that we should not be putting into those positions for another two, three, four, or five years. And these people will have to muddle along, and learn how to get the job done.

So what is being lost? Seasoned experience and know how.

Some of the things that I have done; I have undertaken in the southeast region, a major change in the culture of Internal Revenue Service.

And, as you know, that is not an easy undertaking. It was my leadership that brought it about.

It would have been better if I could have continued with it. Booz, Allen, Hamilton told us it would take us at least eight years to bring about a lasting change in culture. We are at midpoint now.

That would be the one thing that I would like to mention about me, personally, that the organization will be losing.

Mr. McCloskey. Well, thank you, Mr. Cardoza. Mr. Gilman.

Mr. Gilman. Thank you, and I appreciate your coming before our committee, Mr. Cardoza.

When we talk about keeping some of the experienced executives on the federal payroll, do you see any aspects, besides the salary issue that would keep them on the federal work force?

Mr. Cardoza. I think there are other issues. I think the one that is first and foremost on people's minds is the pay. The second one is the conflict of interest rules.

We have lost people in IRS on that, as well. One of these gentlemen that I mentioned left for two reasons, the conflict of interest rules and pay stagnation.

He had to leave before the May 15th date, so that he would not be hit with the same very restrictive rules that were referred to earlier.

I think that the way we manage executives, the way we manage the organization—the Volcker Commission has made some reference to decentralization of authority in the government operation.

We, in IRS, are decentralized to a greater extent than some agencies. But yet, there is more room. There is more that we could do.

I also agree, wholeheartedly, with the Volcker Commission statement that the presidential appointees should be reduced. I believe the figure was from 3,000 to 2,000. In the organization that I have worked in, we only have one political appointee, that is the Commissioner of Internal Revenue, the rest of us are all career people.

When I speak with people from other agencies that do have large numbers of presidential appointees, I hear the kind of things that were described earlier by the initial speaker; the churning that you get when an administration changes, the long periods of time of delay in getting key people back into those jobs.

We do not have that problem at IRS. We have one postition, the Commissioner, and in spite of what you read in the newspaper, Mike Murphy, the Deputy Commissioner, is carrying on very well. It is not a headless animal.

At the Treasury level, there are quite a few political appointees and we do have some of those concerns as we move on. Enter a new administration.

I agree that in those agencies that are heavily populated with presidential appointees, that making some of those positions permanent career positions, would be a major step in the right direction.

And then the one that nobody talks about a whole lot, is the working conditions of executives, especially in the national office.

One of the questions that I am always asked is, why would you not work in the national office? And I am also asked, why will not field executives come to the national office?

The basic reason is that the working environment in most agencies is not comparable to what the working environment is in the field. To my knowledge, no agency has really addressed that.

Mr. **Gilman**. Well, could you amplify that a bit on the conditions? What, particularly, concerns you with regard to the executive force?

Mr. **Cardoza**. Well, I think a couple things. First of all, it relates, to the decentralization of authority.

As a regional commissioner in the IRS, I was responsible for nine states. I knew what we had to do, and we did it with a minimal amount of interference.

We had some direction—appropriate direction from our national office.

If you are a comparable-level executive in the national office, you have lots of people looking over your shoulder. Decisions we can make in the field and move on with, a person in the national office cannot. That is subjected to two or three levels of review and possibly even another couple agencies' review.

I do not think that we need all of that review.

Mr. **Gilman**. But is that not internal regulatory process, internal decisionmaking that really should not be made part of any of our statutory regulations?

Mr. **Cardoza**. Some is and some is not. I would say a lot of it is internal operating, which does not need to be there.

Mr. **Gilman**. Pretty much, effective management, I would think, rather than getting involved in any need for regulatory review. Would you agree to that?

Mr. **McCloskey**. Yes. I do not know that it requires legislation. However, I saw a definite trend in the Volcker Commission Report, and in the testimony of many of the witnesses who have appeared before this panel that some reform and clarification is necessary. It may not require statutory change, but some change is needed.

And then the basic facilities—this is a lovely building here, but many of the agencies in Washington, D.C. do not have the kind of facilities that the Cannon building provides.

Mr. **Gilman**. Now, you talked about the conflict rules and the restrictions on your employment after you leave office. I do not think you want to do away with some restriction, do you?

Mr. **Cardoza**. No. I think it is important that there be conflict of interest rules, but I believe that they are unnecessarily harsh.

Mr. **Gilman**. What would you recommend by way of reform?

Mr. **Cardoza**. Well, the way I read them and the way I understand them, is that I cannot work for a law firm and consult with a person who is representing the taxpayer, and discuss the taxpayer's case with them, even though I am not talking to the taxpayer. Now that, I believe, is too strict.

My belief is that if the prohibition is just on advocating for the taxpayer with the agency, that that is far enough.

Mr. **Gilman**. You do not have any conflict with regard to the one-year provision, do you?

Mr. **Cardoza**. The period of time is okay, but I think that how it is defined, it could be defined not quite as strict as it is.

Mr. **Gilman**. Let us look at another aspect of federal employment. Can you tell us what sort of recruitment programs IRS has and are they successful, or what would you see by way of a need?

Mr. **Cardoza**. We have tremendous recruiting programs throughout the country for all types of employees, from clerical employees that we hire for our 10 service centers that are located throughout the country, and recruiting programs for technical people, such as revenue agents, special agents, revenue officers.

We recruit a large number of college graduates from the campus.

One of the things that we find, especially in the large metropolitan area is, we have extreme difficulty in competing with the Big Eight accounting firms.

We find that for the average student, we are about $8,000 a year less in pay.

Mr. **Gilman**. What is the starting salary for an IRS agent?

Mr. **Cardoza**. Starting pay is about $15,700 per year. And CPA firms, about as low as they get, is about $23,000 to $24,000.

Mr. **Gilman**. And they must be a college graduate?

Mr. **Cardoza**. Yes.

Mr. **Gilman**. I want to thank you for your testimony. Thank you.

Mr. **Cardoza**. Thank you very much for the opportunity.

Mr. **McCloskey**. Thank you very much, Mr. Cardoza. We really appreciate you being here today.

Our next witness is Frank E. Nowak, Director of Post-College Professional Education of Carnegie-Mellon University, who, among other things, will tell us about his problems in considering the position of Assistant Director of the Office of Personal Management, Office Employee Development and Training.

Mr. Nowak, please proceed as you would like.

STATEMENT OF FRANK E. NOWAK, DIRECTOR, CARNEGIE MELLON UNIVERSITY POST COLLECE PROFESSIONAL EDUCATION OFFICE

Mr. **Nowak**. Thank you, Mr. Chairman. This is the very first opportunity I have ever had to give testimony of this nature. Like Dr. West, I request that my written testimony become part of the record so that I might talk briefly about some of the more personal and human characteristics influencing my judgment not to enter public service.

Mr. **McCloskey**. We will accept your formal statement and proceed as you like, sir.

Mr. **Nowak**. Let me first say that I have, like others, considered it a tremendous honor to serve my country. I have directly or indirectly done so through my total professional career.

Upon graduation from college I was commissioned a 2nd Lieutenant and through the Guard system retired as a Major. Concurrently, I worked with Westinghouse in their nuclear submarine program for 5 years. I then formed a company which was the prime contractor for the Office of Economic Opportunity's Head Start Supplementary Training, Upward Bound, Migrant Seasonal Farm-worker programs, and a myriad of other kinds of related programs during the 1960's

I subsequently worked with the State of Pennsylvania on a cogeneration of electricity project along with the former head of the National Aeronautics & Space Administration, Jim Fletcher, in setting up regional energy centers across the State while we were both at the University of Pittsburgh.

I offer this background only to demonstrate and to reinforce my earlier comment that I consider coming to the Federal Government a privilege. It was extremely disturbing to me that after being nominated offered and orally accepting the position, as assistant director with the Office of Personnel Management focusing on employee development and training, to subsequently withdraw. I did resign from Carnegie Mellon conditional upon Congressional approval of the 50 percent pay increase February 7, 1989.

As you know, that did not occur. As a result, fortunately with the complete awareness and approval of the President and Provost, I decided to remain at CMU. The President, particularly, indicated that it seemed rather ludicrous that I would come here for $76,400 when in effect the original $20,000 loss was now turning into about a $40,000 loss. As a consequence, I made it known immediately to OPM that it was impossible for me under those conditions to accept the position.

I think it is important to note that, when I talk about my commitment to public service it represents the marriage of government service and my professional career in education and training generally.

In 1985-86 I was approached by the General Services Administration to come to the Agency as Director of Training for 12 months on a loan basis from Carnegie Mellon University.

I should indicate that I have never directly worked for the public sector as such. My pay has always been indirect and incident to specific deliverables. The opportunity to come to GSA, particularly to develop training programs in the functional career areas of GSA and its training center, while also bringing the knowledge and skills in the area of executive development was a challenge that I was privileged to undertake.

For the past 10 years at Post College Professional Education, which is the mid-career professional education office at Carnegie Mellon, we have brought in at least 2,000 mid-career and mid- to upper-management professionals. We have designed and offered programs that are content specific and relevant to the needs of industry and their managements.

All of these programs were the kinds of offerings I would have liked to have brought to the job. Further, while working as director of training at GSA I had the opportunity to view the Federal senior executive in a different light and was somewhat surprised at the breadth of knowledge and commitment most shared.

What I bring to this hearing is a slightly different dimension than my fellow colleagues testifying today.

It is a real and personal account as it is very disappointing and frustrating, and is based on the fact that I had to turn this position down because of material concerns which has angered me rather significantly.

The problems facing the managements in the public sector and senior executives in the private sector are not that different. I speak as director of Post College but also as a private consultant to at least six to eight major Fortune 500 corporations.

It seems that the areas of concern to managers of tomorrow and today impact directly and have an awful lot to do with global issues. It is no longer enough for executives and top managers to be somewhat parochial and pedestrian to their own product lines and to be somewhat insulated and isolated from the global issues facing the world since such issues influence our professional as well as personal lives.

Using the major theme to teach and to bring forth a global kind of understanding to the management communities, we used the basic disciplines of science/technology, economics, and public policy. We have brought together in a very serious way these three major areas which we feel will most certainly drive the economy through the year 2000.

When you think of these subjects, think of the economic impact, as an example, the rapid decline of the dollar might have on our jobs and personal standard of living. If you look further say at national security, we should all understand the effect socio-political disruptions worldwide might have on our organizations. If you look even further you might look at manufacturing processes and find that the Pacific Rim has really taken over most manufacturing activities as articulated so well in Ira Magaziner's latest book "The Silent War—the Global Business Battles Shaping America's Future." The book points out clearly just how we lost the manufacturing battle and how we continue to lose industry after industry in a sense because of our lack of a broader understanding of global issues and global competition.

So it was incumbent upon me and an exciting opportunity to bring 10 years of experience in working, for example in a global context, with information technology industries, chemical processing industries, manufacturing industries—particularly those with emphasis on the computer-integrated manufacturing system, to the public sector. I really looked forward to sharing these experiences and in updating the functional/technical areas of government employees.

It was glamorous to think that I was asked to do this. It is not a job that has tremendous visibility, but it does have what I considered the basic challenge and opportunity to influence the Federal system on the way we do business.

I must admit, that on December 12th when the phone call came from Mrs. Horner's associate offering this position I had some misgivings about whether or not I could accept. The reason was primarily because at the same time and concurrent with the offer I was a principal in negotiating a rather significant contract for the University with Bellcore (research arm of the seven baby Bells). This is a multimillion dollar supported 18-month master's degree program running concurrently with a 28-week continuing education program for executive and mid to top management.

Fortunately the support from the university, the President and the Provost, was absolutely essential to my considering and then finally accepting the offer. I was amazed at the pride that the university took at my being selected for this position. I was also amazed at the kinds of alternative suggestions that they were helping me work through once it was recognized on February 7th that the pay raise was not going to be passed.

I hate to sound mercenary or self-serving, but it is true that this was an individual and real live case where I was prepared to come to Washington, sign a lease for an apartment, and who made the family judgment that this is how I would cap my professional career. I am 56 years old and I thought 4 years of this would be a delightful way to end my career. Recognizing that upon its conclusion I was welcome back to the university to do some teaching, perhaps some writing, and to continue consulting activities with the Federal Government and organizations in the private sector.

You should also know that I consult with the intelligence community assisting in the development of their management development training program, specifically in providing faculty on leadership issues. I am preparing a significant conference in September—I beg your pardon, for June 27th and 28th, in the area of computer-integrated manufacturing for about 500 individuals in an effort to brief them on where we are in the international marketplace in this area specifically.

The comment was made earlier by the first speaker on international competitiveness. I subscribe to and work with, indeed the opening lecture at the Bubble in June will be the Deputy Secretary-designate of Commerce Tom Murrin, who is one of the leading proponents that manufacturing does matter and that goods are essential in the whole area of industrial competition, economic viability and our position relative to world markets.

So it is for these reasons that it was difficult not to come to Washington. I sincerely say to you Mr. Chairman and members of this Committee, I believe I had an awful lot to offer and I am extremely concerned with the functional training, the technician-level training of the federal employees and I am amazed that there appears to be no management succession plan in any of the agencies that I have had occasion to observe.

I find it absolutely incredible that there appears to be no career management programs. There are career development plans that are in place for some employees; however, there doesn't seem to be a track system or rotation arrangements between the private sector, academia—and the public sector.

I understood from the Senior Executive program—or act, I guess, in 1979, that one of the leading incentives about moving from super grade categories to the Senior Executive Service was the possibility of interacting in and out government—in other words, rotating job assignments between governmental agencies and private sector organizations.

I have observed in the last several months a disillusionment, a loss of self-esteem, and in some cases an embarrassment among SESers. There is no question that—several weeks ago there was a misunderstanding of sorts. I believe someone alluded to it earlier, concerning ethics and procurement policy. The suggestion was that if as a government employee you were involved in procurement that you had to get out before a certain date or you would never get a position in the private sector once you left government or retired. It appeared that there was some ambiguous language in the legislation which suggested that you had to wait one year, two years, or indeed in some cases a lifetime if you were directly involved in the acquisition for the government of major systems.

I have had an opportunity to talk to Jim Fletcher the week that he was welcomed back to Pittsburgh where he mentioned that there were 19 senior people in government that he knew of who left government and understood why I did not accept the job because of the monetary remuneration.

I am sure that sounds rather crass. I have five children. I am in a position at the university that provides tuition remission. I enjoy great freedom. I have one day a week out of 52 to do consulting. That gives me 52 days to consult in the private and public sectors and I have as a consequence of my position about six weeks of vacation and when I weighed all of this and the loss of the income of taking the public job, I just felt that this was too much to ask. I don't think I am alone, and I would suspect you are losing a lot of good people and I am not ashamed or embarrassed to say that I think Constance Horner and her search committee did pick the very best person to lead in a policy sense the training and employee development activities for the civilian side government including FEI, the Executive Centers at Oak Ridge and King's Point and I believe Denver.

I just feel bad and somewhat angry that material gain, or material sustenance, precluded my giving to my country a wealth of experience that I have gained particularly at the executive level.

Mr. Chairman, thank you very much.

[The statement of Mr. Nowak follows:]

STATEMENT OF FRANK E. NOWAK

Director, Carnegie Mellon University

Post College Professional Education Office

I am here because I am concerned as to what we as a nation are asking of our public servants and because once again it was my plan to serve my country. I hope these hearings will make that possible.

This past December I was offered the position of Assistant Director of the Office of Personnel Management's Office of Employee Development and Training. My initial acceptance was based on the conscious awareness of an approximate $20,000 loss...admittedly couched by the promise of the then pending salary increase from $76,400 to $98,000 per year advanced by the quadrennial commission and endorsed by former President Reagan and President Bush. With the February 7th action of Congress, the initial anticipated $20,000 loss doubled forcing a re-evaluation and my formal declination of the offer.

As I have stated in my February 13, 1989 letter to Mrs. Constance Horner, Director of the Office of Personnel Management, I am angry and frustrated at the outcome of events and without apology or embarrassment believe that Mrs. Horner and the Search Committee made the correct selection of me.

For the past ten years the future person power needs for the private and public sectors has occupied my total professional energies. I feel cheated that material needs precluded my taking a national leadership role as the employee development and training policymaker for the over 2.3 million public servants worldwide.

Without speaking for others who were or are in similar positions or are currently in government service and are perhaps re-evaluating their situations, it seems that it just isn't enough that being a member of the public service in itself accommodates professional satisfaction. I am not talking about the highly visible positions like Generals, Ambassadors, etc., but the cadre of American citizens who dedicate their lives to our system. After reading the National Commission's Report and Recommendations on the Public Service focusing specifically on the Recruitment and Retention and Education and Training Task Force Reports, the aura of national respect and prestige has clearly eroded so that compensation long a sub-surface concern emerges as a top consideration. It is not my intention to re-hash all of the expert facts and figures concerning the plight government employees have encountered over the past decade or perhaps Congress' personal indifference to the career civil servant but let me assure you that it has taken its toll in the self esteem, pride, commitment, enthusiasm and perhaps most harmful of all...creativity and imagination within the functional as well as managerial career fields.

As I mentioned previously, my personal career over the past decade has been devoted at the University and as a consultant in the area of mid-career professional development. At Carnegie Mellon my primary responsibility is to design, develop and conduct public offerings as well as custom tailored mid to upper management programs. Inherent in this responsibility is the need to understand a myriad of organizational or corporate product and processes in the global context. This suggests the need to continually appraise managerial traits both short and long term considering rapid technological changes, global market share and the nation's ability to compete internationally.

Let me take a moment to share with you my approach as a member of the Carnegie Mellon administration and as a private consultant to over a half dozen major Fortune 500 companies, and as a consultant to the U.S. General Services Administration and other government agencies. To determine managerial needs continuous analysis of current state of the art and future trends and applications in science technology, economics, management style, and public policy issues are essential. The results of the on-going analysis suggests that top managers and executives of the future in the private and public sectors are concerned and require additional training in such personal behavior skills as demonstrating of strong sense of vision, linking compensation to performance, communicating frequently with employees and customers placing ethics and integrity high on their's and other's personal conduct, reassigning, rotating, or if need be, terminating unsatisfactory workers while rewarding loyalty. On the skills, knowledge and ability side, the following represents areas where managers and executives through the 1990's must possess: strategic management formulation, personnel management, international economics and socio-political considerations, science and technology, computer literacy, marketing, negotiation and internal and external presence.

I wanted to share these traits and characteristics with you because it is precisely these critical areas that I feel the federal process in recruiting and retaining the "best and the brightest" prohibited me from introducing as OPM's Assistant Director of Employee Development and Training.

From March, 1985 to June, 1986 I had the privilege to be Director of Training at GSA on a loan basis from Carnegie Mellon. The University then as it had several months ago felt a sense of pride in my being asked to serve the government in both capacities. Indeed when I orally and subsequently resigned in writing in February it was conditioned and understood that we would maintain our home here and have an apartment in Washington. The President and the Provost agreed that should Congress not pass the increase that under these circumstances it would be ludicrous to accept a position at such a loss. It is noteworthy that concurrent with my discussions with OPM was the fact that I was also a principal in the University negotiations with Bellcore (research arm of the baby Bells) for a multi-million dollar 5-year/28 week per year mid-career professional education program for approximately 70 - 80 managers on information networking. The program emphasizes both the technology, market share and management skills implicit in managing high talented personnel.

At 56 years of age, President Cyert and Provost Jordan were aware that I wanted to cap my structured career with the OPM experience and that after four (4) years, I would like to return to the University part-time and continue to consult. They respected my career goal and suggested several alternatives after the Congressional turn-down of the pay raise that might have lessened my financial hardship. Clearly, without the raise and the shelving of my consulting activities, coupled with the real need and family decision to maintain two residents, made my acceptance economically unfeasible.

From my own values, service to the Government can be tracked from the award of a 2nd Lt. commission in the Air Force and Air Guard upon graduation in 1954 through retirement as a Major. Concurrently, my professional career began with Westinghouse's nuclear submarine program, through 15 years as President of a private not for profit consortium of universities with primary contracts for Head Start Supplementary Training, Follow Through, Migrant Workers and Upward Bound programs in addition to institutional building efforts worldwide as supported by philanthropic organizations. All of these efforts including my current position at Carnegie Mellon had both governmental service, directly and indirectly, and person power development education and training as personal and professional goals.

It is on this basis that I strongly urge a substantial pay increase for members of the senior executive service and that consideration be given to separating such pay increases from the other branches of government.

Time permitting - willing to discuss future impacts

1. Dual Careers
2. Aging Workforce...Freeze
3. Past, Present and Future Executive Seminars
4. Professional Contact Network
5. Effect on Colleges of Public Administration

Mr. McCloskey. Thank you very much, Mr. Nowak. I think much of your statement speaks for itself very eloquently.

From your description of your interest and what you are concerned about in the Federal service, and I guess what you would have been doing, it would seem to me you would have been ideally placed to be one of the key leaders in helping correct many of the ills we are talking about today regarding Federal service. Could you list, or chart out, two or three areas that you would have liked to have worked on the most, assuming you had gone into office?

Mr. Nowak. I appreciate that question. You see, one of the things that I feel of value that I could have brought to government, quite frankly, Mr. Chairman and Members of the Committee, was something I found out that once I got the job I may not have been able because of conflict of interest appearances to easily take advantage of the people in the private sector and academia representing a very professional network of experts. These are people from all walks of life that I have interfaced with over the years and can call on whenever one has problems or needs assistance in specific discipline or areas.

What I was hoping to bring to Washington was the kind of program I inaugurated for both the intelligence community as well as GSA, which is a series of monthly, rigorous briefings on topics dealing with science, technology, public policy and economics.

We brought Nobel laureates in to speak on these subjects. We had Zbigniew Brzezinski, Mike Ledeen talking on terrorism, Edward Lutwak on procurement policy in the Pentagon, etc. We have had a myriad of individuals who spoke in the area of management science. I was hoping that I could inaugurate these kinds of programs government-wide.

In addition, I wanted to start bimonthly one-day session for senior executives for in-depth discussions on issues which as a consequence of our research of the private sector, particularly in the information technology, the banking industry and also in the manufacturing industry the general concerns of management. These issues, from a behavioral point of view, are ones of vision, of compensation and money, of personnel performance and personnel management and of individual personal presence. Additionally, I wanted to focus attention on the communicative skills up and down and the need for furthering those kinds of skills. These were some of the things I felt FEI and the Executive Centers around the country and the individual training organizations within departments and agencies might begin to take a hard look at.

We live and compete in a global situation. We no longer can enjoy the fact that we have total market share. You may think that the public service does not have—or should not be aware of these issues. Frankly, if nothing more from a personal point of view, they have a stake in all these issues. Certainly to be a better executive and/or manager, the global nature of competition has got to be a concern.

These were some of the things, Mr. Chairman, I was hoping to bring to this position.

Mr. McCloskey. Thank you. Another area—and you have commented generally and specifically, but maybe to get you to elaborate and add some of my own observations, I do not think you have to be too apologetic for not accepting the position with the very significant degree of monetary and other loss you would have taken.

But to go over that a little bit again perhaps in more detail, I take it even if the pay raise had gone through to the $98,000, just dollar for dollar you would have still been taking a $20,000 loss? Is that not correct?

Mr. Nowak. When we first talked about this of course, it was a 50 percent increase, and some people were talking $112,000 for the level at which I was being considered. So, I would say so, sir. That it is somewhere between that figure and the $98,000 which I believe represented about a 27% increase over the base salary.

Mr. McCloskey. And some other factors, some of which you mentioned. Obviously the university help with children's tuition and so forth, you would have foregone that and faced higher education in bills, is that not right?

Mr. Nowak. I have one daughter in the back of the room who is a junior at Penn State. Fortunately, that is the last of the five children and college costs was not a big consideration at that point in time.

I think what I was referring to, Mr. Chairman, was the absolute openness, candor and willingness of the University administration to do whatever possible to make the whole situation work.

Mr. McCloskey. You had a very unusual set of colleagues and superiors there to be that accommodating when, in effect, they were losing you.

Mr. Nowak. Pardon me? Yes, sir. I am sorry, I'm not sure I understood.

Mr. McCloskey. They were very nice, given your problems in transition. I can imagine a lot of employment situations where it would have been acutely embarrassing to the point of having lost out totally.

Mr. Nowak. As I mentioned before I was one of the principals in a rather significant contract, probably the first contract and the first university in the country that will literally marry the computer and the telephone, in an information networking program with Bellcore Systems financial support. So that it was with mixed emotions I suspect that the president and the provost viewed my situation. Let me clarify. What we were trying to do—and I guess with your indulgence because I am somewhat ignorant on this—they were trying to determine whether or not there were ways apartments from the university's point of view could be shared because we continually have people come down here on sabbatical for three, six months at a time, and we were entertaining the possibility of undertaking a lease with my paying an amount which could relieve my personal financial burden of moving.

Maybe we ought to have a Carnegie Mellon University apartment was the thought.

Mr. McCloskey. Be careful on apartment arrangements. That is my advice of the week. Bad humor today.

How about the whole question of prestige and status? We hear concerns from everyone about the loss of prestige and status, obviously to some degree job satisfaction.

Do you have any ideas on how to improve that? So much of that is intangible, I think.

Mr. **Nowak**. Outside of the Beltway, there is a certain cynicism inside. I might say, however, back in Pittsburgh to come to Washington had an aura of prestige, and it still does. There is no question among my friends and colleagues who maybe are somewhat a little more intellectually sophisticated than average, that a Washington assignment is prestigious.

The bashing of the last three administrations or whatever, I guess, Carter, Reagan, all marched to Washington against big government. As a result the feeling of being part of the Washington establishment has lost some of its aura. I guess there is no question about that.

However, in my town and I think middle America and smaller towns generally, if you say you are from Washington, it does not matter what position you have, it could be a GS-7, 9, 11, whatever, I think it still carries a certain aura of prestige.

The constant bashing, belittling, and demeaning of the public servants that I have observed, particularly as a consultant to the two agencies I have mentioned, has resulted in some degree to a lack of self-esteem, a lack of enthusiasm and a lack of commitment. I guess it has taken too long—as someone alluded to earlier, for appointees to be named, investigated and confirmed.

Tom Murrin, a close friend of mine, as I have already indicated, is an example. Tom literally has been waiting since December for what the White House announced in the Post this morning, and he has gone through literal hell in filling out an incredible number of forms. He told me he lived in 42 places throughout his professional career and couldn't remember his neighbor in Egypt which literally crippled his personal investigation for weeks.

The whole process is cumbersome putting his money in trust, all of that sir, I think contributes to a feeling of "is it worth it?"

Is there job satisfaction? I think so, but I do not know if that is enough to hold quality people—at some point money and the ability to support your family comfortably far outweighs job satisfaction alone.

Mr. **McCloskey**. How much did the cost of living comparison, say, from Pittsburgh to Washington go into your calculations?

Data I read recently showed an Indianapolis figure being 95 whereas D.C. among the highest in the country was 130, so you have a house in Indianapolis that goes for $62,000 goes for $130,000-plus here. Did that figure into your real-life calculations?

Mr. **Nowak**. It did tangentially, Mr. Chairman, because we were going to cap our career here, so it was not our intent to sell our home for some personal reasons as well, to come here. We were literally just thinking of leasing an apartment in effect running two homes, one in Pittsburgh as well as D.C.

The leasing of an apartment started to approach with the living, transportation and parking about $18,000 that was living in Foggy Bottom at the Letterman. I had a reciprocal agreement with G.W. I believe they owned the building there, the price was no different, but the ability to eat at the faculty club, the ability to use the gymnasium, all those good things were working themselves in and contributing to the positive side of the equation.

However, when you looked at the loss of consultant fees and cost of living, you just could not afford on balance $18,000 to be here and to have my family, basically, back home.

Mr. McCloskey. Thank you very much, Mr. Nowak. We really appreciate your excellent testimony. I appreciate your taking all this time and coming all this way.

In an ideal world perhaps you will be reconsidering the federal service after things have improved. Thank you very much, gentlemen.

We have one more concluding witness, Mr. John Nolan, General Manager, former Postmaster in the New York City Division until March 1989.

Mr. Nolan, you may proceed as you like.

STATEMENT OF JOHN NOLAN, FORMER POSTMASTER, NEW YORK CITY DIVISION, U.S. POSTAL SERVICE

Mr. Nolan. Thank you, Mr. Chairman. I appreciate the opportunity to speak here today. My name is John Nolan, and on March 6th of this year I resigned from the Postal Service for a position in the private sector.

At the time of my resignation I was the General Manager and Postmaster of the New York City Division. I had been with the Postal Service 18½ years. My sole reason for leaving was financial.

Upon graduation from college the Post Office Department offered me a position as a management intern. I was somewhat concerned then about accepting a government position, due to the lower pay potential.

However, what was most important to me in the job was the opportunity to learn, to prove myself in challenging situations and to work for a company performing an important service or producing a quality product. Money was not the main criterion in my job selection. The Post Office's management intern program looked like a real opportunity to achieve my nonmonetary goals. It was. In the Postal Service I found an organization with a service that was important and a company with limitless challenges and opportunities for growth for people who produce.

As my career progressed, hard work and the achievement of goals was rewarded through recognition within the organization and opportunities for promotion. The recognition frequently took the form of involvement in challenging and progressive projects with visibility.

It also meant selection for a semester at Harvard and a month in Germany as part of a postal executive interchange.

My ideas were accepted, my opinions considered, and my advice sought on a variety of issues. These were all very important to me.

I was treated extremely well by the Postal Service in these ways and in the promotions I received. I had no thoughts of leaving the Postal Service.

I was involved in management challenges earlier in my career than I had thought possible. In ten years I moved from management intern to regional director in one of the Postal Service's five regions and in 1985, less than 15 years after joining the Postal

Service, I was given the chance to run the world's largest post office in New York.

All these promotions obviously brought increases in pay. They also frequently meant a move to a new location. I found that while I was making more money, the living costs in the areas I was working were eating up these increases.

There are two aspects of Postal Service compensation that began to bother me more and more as I rose higher in the organization. The absolute dollar amount of the salary and bonus potential and the small monetary difference between the bonuses available for high performing executives versus mediocre performers.

With regard to the absolute pay levels, as Postmaster of New York City I managed an organization large enough to be ranked in the middle of the Fortune 500, 25,000 employees, $1.1 billion in revenues and $900 million in operating expenses.

My salary was only $78,000 a year. With bonuses for good performance, my total compensation was around $90,000. With a typical workday of over 12 hours and 70-plus hours per week, I was making about $25 an hour, probably about double the amount paid to the average clerk or letter carrier.

Just as frustrating was the small amount of money that could be paid in bonuses for performance. The result, very little difference monetarily between winning and losing.

With the challenging goals postal executives are faced with each day and year, and the increasing risks key managers face for subpar performance, the risk and reward equation has long been out of balance to the point where it is a source of serious frustration for postal executives.

As my family grew and I was faced with the challenges of putting two children through college, the lack of financial reward in the Postal Service caused me to begin to consider a career outside the government. While I was recruited for my present position, I had been pursuing other private sector opportunities over the last year.

I repeat what I indicated at the start of my statement. The only reason I left the Postal Service was the lack of financial opportunity. It is my strong opinion that unless something is done soon to raise the allowable compensation levels for top executives in the Postal Service, more key managers will leave.

It is already very difficult to get executives in the Postal Service to move to high cost areas and to take on the toughest management assignments due to a lack of financial incentive.

In addition, the Postal Service is all but cut off from hiring talented private industry executives for non-officer career positions for the same reason. You simply cannot attract and retain the best if the compensation offered is so grossly out of balance as it is today.

The situation is serious. It could affect both private and corporate America as the Postal Service is an important ingredient in our society.

The Postal Service does not run on automatic pilot. It takes good people. Without quality leadership at all levels, a key ingredient for excellence is missing. I urge you to give the Postal Service and other federal agencies an important tool, the ability to attract and keep high caliber executives by allowing compensation to rise to reasonable levels. Thank you, Mr. Chairman.

Mr. McCloskey. Thank you very much, Mr. Nolan. I will read a portion of a letter from Postmaster General Frank to Chairman Ford.

"Dear Bill, I know that you recently lost a valuable staff member because of the failure of the pay bill to be passed. We, too, are in that position with the leaving of John Nolan, our Postmaster in New York, whose letter is enclosed. One line of it, obviously, is very poignant. If there was only some way to adequately pay postal executives.

"If there is anything I can do in this regard, please call upon me at any time. Sincerely, Tony Frank, Postmaster General."

Mr. Nolan, can you describe your opportunities now? You have left a $78,000 a year position, is that not correct?

Mr. Nolan. Yes.

Mr. McCloskey. I understand you have some other opportunities. Do you feel comfortable describing them?

Mr. Nolan. Yes. I was recruited by Merrill Lynch to head up the operations of a new subsidiary that it is about to announce called Tritech Services, Incorporated, which basically takes their in-house mailing, proxy, facilities management, computer printing and graphics operations into a separate organization to attract new business; to turn a cost center into a profit center—essentially starting up a new business.

Mr. McCloskey. And your salary will be better than what you left, is that not correct?

Mr. Nolan. The salary is significantly better than when I left. But even more important than the absolute salary is the better I do in the job that I now have, the more opportunity I have for pay.

Mr. McCloskey. Do you have any strong feelings on the necessity to uncap pay for postal executives? Do you have any firsthand information as to other people in the service having similar reactions to you, in effect, the talent train that seems to be the case?

Mr. Nolan. Yes. I am not sure if my views on the pay cap are absolutely consistent with everyone that I know of and speak with in the Postal Service, but I do not believe that all executives in the Postal Service should have their salaries raised.

What is important, though, is to raise that cap so that the Postmaster General has the flexibility to incent those managers that produce and to enable managers who take a risk to accept tougher challenges and who succeed at those challenges to be reimbursed for it.

Having failed to perform in those challenges, even though they may have accepted them, does not deserve pay. You pay for performance if you want an improvement in the operation.

Most of the people that I worked with, most of the executives in the Postal Service, do not want just the pay increase for nothing. What they want is a chance to be reimbursed when they produce.

One year in the Postal Service I received a special achievement award. There is a rule in the organization, that you cannot receive that award two years in a row. The next year I became Postmaster of New York and was the leading division in the country in achieving the goals. I could not get a performance award. It drove me crazy.

There are a number of executives that are extremely frustrated. I think it takes the form in some cases of looking for other work and in some cases for not challenging themselves to do the best they can do. It is not a conscious, deliberate thing. It is just a wearing down process after a while.

As you approach another fiscal year, you ask yourself if I think potentially I might possibly improve productivity 10 percent, do I really want to give that this year knowing that there really is not any benefit for that. Maybe I ought to give a little bit this year and then a little bit next year and then a little bit the year after.

Mr. McCloskey. Do you think it can actually get that conscious as far as implementation of one's talents? That is an amazing thought to me.

Mr. Nolan. I think what it does is cause you to fight to get reasonable goals instead of challenging yourself to produce all you can produce.

I do not think it makes a difference day in and day out about the way you do your job, but the fact—it is human nature if you set a goal and you are achieving that goal— you know, there is no creative tension there. If you set an incredible goal because you realize there is a lot of potential there monetarily or what have you, then you keep that creative tension and you keep pushing.

Absent that creative tension over a period of 10, 15, 20 years, I believe it does have an impact, yes, sir, I do.

Mr. McCloskey. Do you have any strong thoughts on locality pay and the feasibility of administration as you know in effective in pay ranges for some of the positions in different areas of the country, whether it is New York or Nashville?

Mr. Nolan. In the Postal Service's case, the larger the city, the larger the jobs are. I think the job was worth more anyhow in the largest locations, regardless of cost of living.

However, there is just not enough difference. I was just talking to the recently retired General Manager of the Buffalo division who indicated to me that he did not feel at all underpaid for the cost of living in his area with the challenges that he had. He felt that the risks and reward were in synch, but could not understand for the life of him why I would ever have taken the job in New York knowing the pressures and the cost of living.

Frankly, the costs of living are so dramatically different in places like New York, that it is putting an extra burden on executives in those locations. And for a fact, I know of a number of people who would refuse to even consider a job in New York, Boston, Chicago, not because of the challenge, but because they simply could not afford it.

Mr. McCloskey. Can you comment on any possible improvements in the administration of the service's bonus program?

Mr. Nolan. The current bonus program they have?

Mr. McCloskey. Right.

Mr. Nolan. The current bonus program is a good one, certainly much better than we had seen in the past because it is tied directly to performance, much greater than it had been in the past.

With the advent of a new reorganization that took place in the Postal Service, it put greater amounts of money at the disposal of people in my position, General Manager, large city Postmaster if performance targets were reached, and I think that was good.

The discussions that occur within the Postal Service about the fair way of awarding it are the typical review that you find in any company, and really are not critical from a legislative standpoint. They are just a learning and growing process as you move into a field of compensation that we had not been used to in the past.

I would say there are instances where I could have missed a budget target by $50 out of the $200 million in a particular quarter and would not be eligible for a bonus. Those things could be ironed out over time, though, and we realized it was a new process, and I think every year it does get better.

I think the biggest problem, though, is that there is very little matching between the degree of difficulty of the goals that managers accept and the bonus. If you received an easy goal in a particular year for whatever reason and you met that goal, you are just as liable in some cases of getting a good performance award as someone who has taken on a significantly greater challenge and achieved that target.

So, I do not think it is a mismanaged incentive system. I just do not think that the money is there. In many industries I would have been willing to take a cut in pay if they would have significantly increased the bonus potential because I thought that is where the pay should be, for performance.

Mr. McCloskey. So, you are a great advocate of more individual incentive reward in the public sector?

Mr. Nolan. I am advocate of paying what it takes to get the right person for the right job. But then, incenting that person to the maximum extent possible to achieve that creative tension in the individual, yes, sir, I am, and I think—one of the things I mentioned in my testimony—I think it would be healthy for the Postal Service to be able to draw for lower level positions (the Postmaster General Manager of a division level), people from industry to take on significant challenges. And more than just a brief hiatus because you cannot get the benefits of an individual's talent in a very short period of time. But to take several years, four or five years and take on a significant challenge and then maybe cycle out, again, into private industry or stay in other challenges in the government. You just cannot draw on those people because they are all making more money significantly than you are.

Mr. McCloskey. Thank you, Mr. Nolan. I really appreciate it. I wish you the best in your new career and to everyone who testified today, particularly to Mr. West. I have a feeling there will be positive legislation along the lines of the Volcker Commission coming out of this committee under Chairman Ford's leadership.

The simple fact is there are no alternatives to a quality public service, and I want you gentlemen to feel that you made a significant achievement in numerous ways, not least of all by your testimony today which I am sure that the chairman particularly will find invaluable. Thank you very much.

[Whereupon, at 12:10 p.m., the committee adjourned, subject to the call of the Chair.]

[The following statements were received for the record:]

(From George J. Mattis and Kenneth R. Strawberry)

Mr. Chairman,

We are George J. Mattis and Kenneth R. Strawberry. Thank you for giving us this opportunity to address the committee on an important matter: the predicament of GS executives. We both are GS-16 executives with over 30 years of military and civilian service.

As of 1978 there were two types of Federal executives: General Schedule (GS) executives at grades GS-16, 17, and 18, and Executive Schedule (ES) executives levels I through V. In that year the Congress passed the Civil Service Reform Act, which added a third type, Senior Executive Service (SES)executives. The Act (5 U.S.C. 3132 (a)(2)) defined an SES position as any position in GS-16, 17, or 18, or in level ES-IV or V, and described the general responsibilities of such positions.

Now 10 years after the Act was passed, there remain three types of Federal executives: ES, SES, and GS. In the report of the National Commission on the Public Service GS executives have been overlooked.

Mr. Chairman, we GS executives have served our country long and loyally. During most of our executive service we have not been paid our authorized (=scheduled) salary, because it has been capped by a law passed in 1951. By contrast SES executives receive their authorized salaries, plus yearly bonuses. Ironically, the maximum authorized salaries for GS executives has, from 1978 to date, exceeded the highest SES salary. The current Executive Order on Salaries (E.O. 12663) illustrates this key point:

GS-16/9	$82,500	SES-1	$68,700
GS-17/5	$83,818	SES-2	$71,800
GS-18/1	$86,682	SES-3	$74,900
		SES-4	$76,400
		SES-5	$78,600
		SES-6	$80,700

In our own case, because of the pay cap, we will receive $5,560 less than our authorized salary in 1989.

This discrimination against GS executives is demoralizing, demeaning, and unfair to us and our fellow GS executives. GS executives are the only group of Federal executives who are not paid the salary already authorized to them. As the first step in providing equitable compensation for all Federal executives, we urge the committee to recommend removal of the pay cap from the salaries of GS executives.

We appreciate having been allowed to bring this issue to the attention of the committee.

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Testimony of the

National Association of Securities and Commercial Law Attorneys ("NASCAT")

before the

House Post Office and Civil Service Committee

on

The Recommendations of the
National Commission on the Public Service

Given by

Robert N. Kaplan, Esq.
President

and

William S. Lerach, Esq.
President-Elect

The National Association of Securities and Commercial Law Attorneys ("NASCAT") is an association of more than 25 law firms located throughout the United States, who specialize in complex litigation primarily in the federal courts. Some members of NASCAT have been practicing before federal courts for more than 25 years. The members of NASCAT are aware on a daily basis of the enormous caseloads carried by sitting federal judges and the comcomitant pressures on the bench and bar. As one example, in many federal districts it is not unusual for cases to be pending for more than five years. When trial dates are scheduled, they are frequently postponed, and great pressures are placed on counsel to settle the litigation.

As set forth hereafter, the failure to increase judicial salaries will further exacerbate an already serious situation and may cause the federal judiciary to lose prestige and to a large extent its "independence", which was one of the principal constitutional goals.

In the Federalist Papers, Madison emphasized that "justice is the end of government" and "the end of civil society," while Hamilton stated that "laws are a dead letter without courts to expound and define their true meaning and operation." In order to ensure that the federal judiciary would fulfill this important function, independently, Article III of the Constitution provided that federal judges would have lifetime tenure ("shall hold their offices during good behaviour") and shall have security of salary ("... compensation, which shall not be diminished during their continuance in office.").

However, within the last 20 years, the basic premises which underlie the "independence" and "security" of the federal judiciary have been severely undermined, due to inadequate compensation. During the period 1969-1989, salaries of federal district and circuit court judges have declined in real terms by 30% and salaries of Supreme Court Justices have declined by 43%. During this period, the Consumer Price Index has increased by 222% and certain important components of the Consumer Price Index have increased by substantially more (housing costs on a national average - 400%; college tuition at private colleges and universities - 400%; public colleges and universities - 300%; medical costs - 308%). However, federal judicial salaries on the average have increased by only 124%. In 1969, district and circuit court judges and Supreme Court justices received salaries of $40,000, $42,500, and $60,000, respectively. Adjusted for inflation, the equivalent of these salaries would be $128,600, $136,850 and $193,200, respectively, in 1988 dollars. Instead, federal district and circuit court judges currently receive salaries of $89,500 and $95,000, respectively, while Supreme Court Justices receive a salary of $110,000. Judges cannot supplement their income by speeches, law firm memberships or other outside activities other than part time-teaching. Judicial independence makes judges economic prisoners of whatever salary they are provided.

While there has been a tremendous erosion in the real value of federal judicial salaries, the complexity of the job and the caseloads have increased tremendously. Congress has continually passed legislation creating new rights and there are numerous new statutes which afford protection in the area of civil rights, consumer protection, and the environment, among others. In 1969, the average number of cases per federal district judge was 339. By 1988, the average number of cases per district judge amounted to 520, an increase of 53.4%. Thus, while the workload of district court judges was increasing by 53.4%, their salaries in real terms were declining by 30%.

The job of a federal judge is extremely complex. Federal judges must have expertise in all types of criminal and civil cases. They are asked to make rulings in cases involving such widely disparate areas as drug prosecutions, civil rights, securities, antitrust, copyright, trademark, employment discrimination, and the whole panoply of state common law causes of action, which are heard in federal courts in diversity jurisdiction cases. These areas involve some of the major social and economic issues of the day. Each of these areas is sufficiently complex so that there are lawyers and professors who spend their entire careers litigating and researching in a particular area of the law.

While the complexity and caseloads of federal judges have been increasing tremendously and while their salaries have been declining substantially in real terms, salaries in related professional areas (which were already much higher than judicial salaries in 1969) have continued to increase substantially, in excess of the increase in the Consumer Price Index. Thus, while salaries of federal judges and justices have decreased in real terms by 30-43% in the last 20 years, the income of attorneys, accountants, and engineers have increased in real terms by 19%, 32%, and 17%, respectively, during the same period of time. As a result, graduating law students, with no experience, are receiving salaries almost as high as district court judges, and the judges' law clerks, who have only one or two years' experience, can receive salaries upon leaving their clerkships at the same or higher levels than the judges. In 1988, the average salary for first-year associates at the 20 largest law firms in New York City was $71,700 and in 1989, one New York firm offered starting salaries of $82,000 and salaries for second year associates of $92,000. Furthermore, associates five years out of law school at the same 20 firms had average salaries of $114,800, substantially more than any federal judge except the Chief Justice of the United States and a number of New York firms pay associates five years out of law school as much as $140,000 per year.

The compensation of federal judges is even more out of line when compared with partners in law firms with equivalent experience to that of federal judges. A recent survey reported earnings of approximately $340,000 per year for the top 10% of partners with 25 years of experience in cities with populations of more than one million. In cities with slightly smaller populations, partners with the same experience reported earnings of just under $300,000. In larger law firms, the top partners reported even higher earnings. Thus, the salaries of federal judges are dwarfed by comparison with the earnings of attorneys with the same age, position, and experience levels of most federal judges. Also, salaries of law school deans and professors at the top 25 highest-paying law schools in the United States exceeded the salaries of district and circuit judges, and the deans at those schools all had salaries greater than those of the Supreme Court Justices including the Chief Justice. Law school professors normally only work a nine month year, have opportunities for outside consulting income, and have other significant fringe benefits. Federal judicial salaries are also substantially lower in United States dollars than salaries of equivalent judges and justices in Great Britain and Canada.

As a result of the decline in real terms of federal judicial salaries and the growing disparities with the income of lawyers in private practice, the pressures on federal judges to resign their positions and to enter private practice have become enormous. In the 11 years from 1958-1968 there were only three federal judicial resignations. In the 10 years between 1969 and 1978 there were 20 resignations. However, in the 10 years between 1979 and 1988 there were 42 resignations. Surveys of these departing judges show that in most cases their compensation level played a significant role in their decisions to resign. Recent surveys of federal judges show that even though federal judges are dedicated and find great satisfaction in their work, more than 50% have considered resigning due in large part to salary levels. Unless federal judicial salaries are increased substantially in the near future, it is likely that the trend towards resignations will accelerate.

Indeed, it has become much more difficult to find highly qualified individuals to accept federal judicial appointments. Former Chief Justice Burger reported that with respect to one federal judicial appointment, the first 10 individuals who were approached declined the position, in large part, because of the salary level. Since recently it has taken an average of more than 15 months to fill a judicial vacancy and since it has been estimated that it takes approximately five years for a new judge to begin to work at maximum efficiency, the resignations of federal judges exacerbate the staggering caseloads of the remaining federal judges. This places more pressure upon the sitting federal judges.

The above facts should be of concern to all Americans. All of us depend upon a high quality, efficient judicial system. We have all heard the adage that justice delayed is justice denied. The delay in the adjudication of lawsuits involving important issues can have an adverse effect on the economy. Justice may also be denied if an inexperienced, underequipped, overworked individual is asked to decide very complex, sensitive issues which are crucial to society and the economy.

Unless judicial salaries are increased substantially in the near future, the federal judiciary will lose its prestige and to a large extent its "independence." The constitutional goals of security, lifetime tenure, and independence of the federal judiciary will have been severely compromised. The federal judiciary will become increasingly populated by (1) wealthy attorneys who have already achieved economic independence in private law practice and who might consider a judgeship as a form of semi-retirement; (2) persons who have not been successful in the private sector; and (3) younger attorneys who view a federal judgeship as a four- or five-year "clerkship" in order to achieve a top partnership with a large, local law firm or to further his/her career in private practice. A judge who views the appointment as an interim step in his/her career may not be impartial when large, powerful local law firms appear before the Court since such firms may offer future employment opportunities.

All of us should take steps to ensure the continued excellence and independence of the federal judiciary. As part of these efforts, we should all support legislation and other steps to immediately increase the salary levels of the federal judiciary.

Federal Bar Council

THOMAS W. EVANS
President

June 9, 1989

The Honorable William D. Ford
Chairman
House Committee on Post Office and
Civil Service
United States House of Representatives
309 Cannon Building
Washington, D.C. 20515

Dear Congressman Ford:

During the course of my May 10, 1989 testimony on judicial compensation, several members of your Committee raised questions concerning retirement benefits accorded the federal judiciary and, in particular, judges having "senior status." In consideration of the Committee's concerns in this area, we briefly summarize the pertinent statutory provisions and certain statistical information provided to the Federal Bar Council by the Administrative Office of the U.S. Courts.

The age and service requirements for entitlement to retirement benefits are set forth in 28 U.S.C. § 371(c). Under § 371(c)'s sliding "rule of 80" system, retirement benefits vest when a judge has attained an age and provided a term of service that together total 80 years. The minimum age is 65 years, with 15 years of service; at an age of 70, 10 years of service would be required.

Upon satisfying the "rule of 80," a judge may either retire from office (pursuant to 28 U.S.C. § 371(a)) or retain the office but retire from regular active service (pursuant to 28 U.S.C. § 371(b)). Judges who choose to retire from office receive, for life, an annuity equal to the salary he or she was receiving at the time of retirement. Judges who choose to retain the office but retire from regular active service (i.e., take what is commonly known as "senior status") receive, for life, the "salary of the office." Thus, those taking senior

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status get the benefit of any salary increases accorded the judiciary during the remainder of their respective lifetimes, while those who retire outright receive an amount fixed at the time of retirement.

Notwithstanding their nominal retirement, senior judges play a critical and, in our view, virtually irreplaceable role in the administration of justice. Senior judges continue to perform "such judicial duties as [they are] willing and able to undertake" (28 U.S.C. § 294(b)), and history shows those duties to be substantial. Senior judges handle some 10-15% of the federal judiciary's workload. According to statistics recently compiled by the Administrative Office, for example, senior district court judges (numbering 231 versus a total of 572 authorized judgeships) conducted 12.7% of the trials held in 1988 and accounted for over 13% of total judicial hours spent in trial. Senior appellate judges (numbering 68 versus a total of 168 authorized judgeships) participated in a comparable percentage of proceedings in the Courts of Appeals. Considering that the caseload for a trial judge has more than doubled since 1965 and that of an appellate judge more than tripled -- as Judge Coffin testified before your Committee on May 10, 1989 -- the contributions of our senior judges are evident.

Senior judges, who by definition retain their office, continue to face many of the same constraints upon outside employment as regular active judges. In particular, both the Code of Conduct for United States Judges and 28 U.S.C. § 454 prohibit a senior judge from engaging in the practice of law (with § 454 making such extra-judicial conduct a "high misdemeanor"). Only by taking full retirement, thereby precluding further performance of judicial duties and foregoing the benefits of future salary increases, can a senior judge remove him or herself from that restriction.

The net effect of these provisions is that without a reasonable prospect of some salary increase in the future, a judge who has met the age and service requirements for retirement has very little to lose from a monetary perspective, and much to gain, by taking full retirement rather than senior status. Given the substantial contributions and level of performance these judges have evidenced to date, loss of their services would be an unhappy prospect indeed for the remaining regular active judges and the federal judicial system as a whole.

Respectfully yours,

Thomas W. Evans

National Commission on the Public Service
1616 H Street, N.W., Suite 200, Washington, D.C. 20006, (202) 638-0307

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March 14, 1989

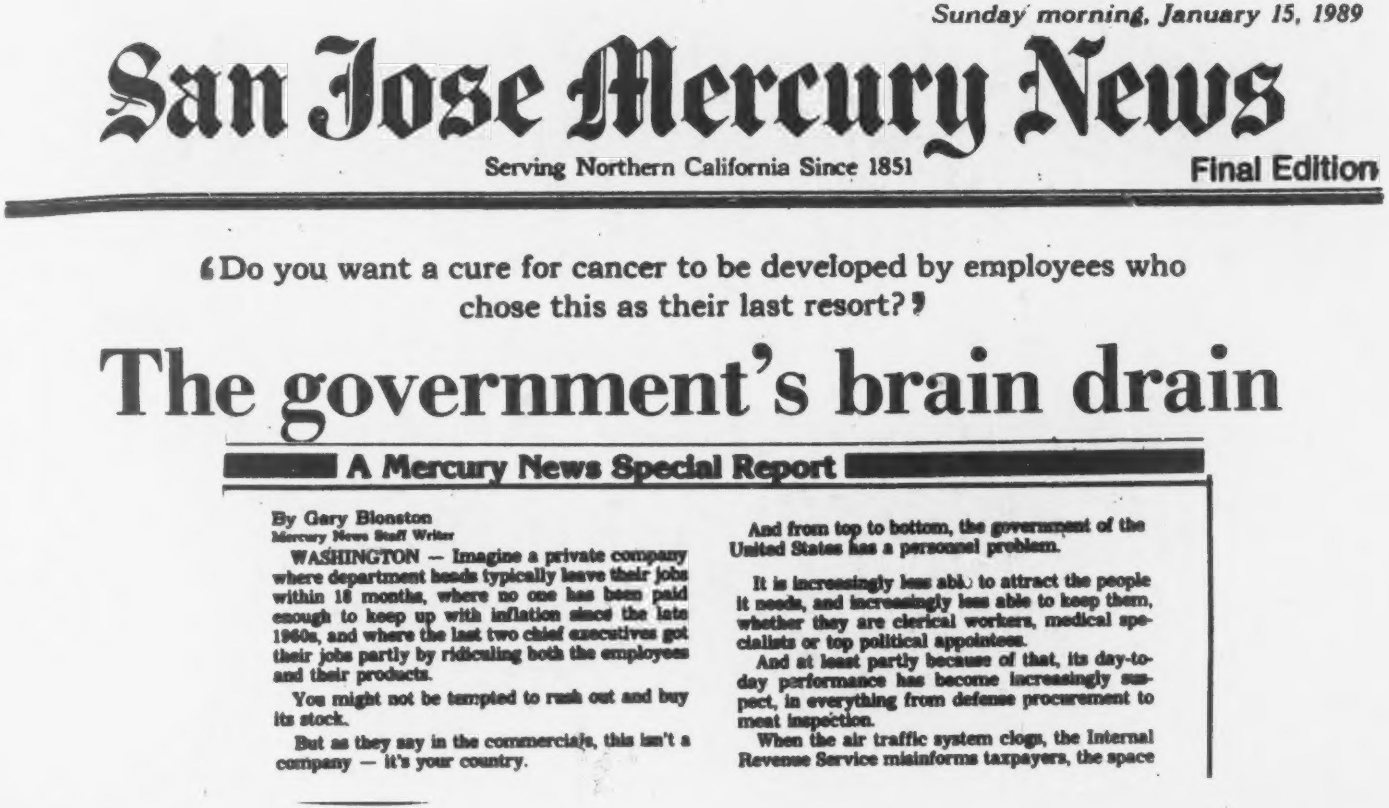
Dear Colleague,

Here is a newspaper feature article that really tells the story of the career Federal Worker. It was written by Gary Blonston of the San Jose Mercury News, and distributed to some 200 dailies on the Knight Ridder syndicate wire. We at the Commission felt it should get the widest possible attention among the nation's legislators and others concerned with good government.

The report of the National Commission on the Public Service is now scheduled to be released March 29.

Sincerely,

Paul A. Volcker
Chairman



Sunday morning, January 15, 1989

San Jose Mercury News

Serving Northern California Since 1851

Final Edition

‘Do you want a cure for cancer to be developed by employees who chose this as their last resort?’

The government’s brain drain

A Mercury News Special Report

By Gary Blonston
Mercury News Staff Writer

WASHINGTON — Imagine a private company where department heads typically leave their jobs within 18 months, where no one has been paid enough to keep up with inflation since the late 1960s, and where the last two chief executives got their jobs partly by ridiculing both the employees and their products.

You might not be tempted to rush out and buy its stock.

But as they say in the commercials, this isn’t a company — it’s your country.

And from top to bottom, the government of the United States has a personnel problem.

It is increasingly less able to attract the people it needs, and increasingly less able to keep them, whether they are clerical workers, medical specialists or top political appointees.

And at least partly because of that, its day-to-day performance has become increasingly suspect, in everything from defense procurement to meat inspection.

When the air traffic system clogs, the Internal Revenue Service misinforms taxpayers, the space shuttle program founders, the causes typically are multiple and complex — but at the bottom always are issues of individual competence. In the view of many federal managers, it's no wonder.

Last summer, 59 percent of the federal executives surveyed by Government Executive magazine said their new hires were "marginally worse" or "much worse" than in the past. And 73 percent said the agency they worked for was experiencing "a brain drain" because of people leaving for opportunities in private employment, academia or state and local government.

That revolving door spins so rapidly that installations employing technical people in some high-cost areas — like the Navy's Facilities Engineering Center outside San Francisco — report turnover of 40 percent to 50 percent every year.

"As soon as they have a track record, private industry snaps them up," said Navy spokesman David Easter. "We're kind of acclimated to it. It's a reality, and there's no way to beat it under current circumstances."

Across the continent in another expensive city, the FBI has 300 unfilled jobs in its New York office, a 20 percent vacancy rate. Trying to prevent more losses, the FBI just raised the salaries of its experienced New York agents by 25 percent, to $39,000 a year — about $1,000 more than a rookie New York police officer.

IRS recruitment problems

The IRS has similar problems. It is hiring accountants with scores as low as the 54th percentile on the Certified Public Accountants examination. And when IRS criminal investigator Bridget Marchetta recruits at universities around her home base of San Jose, she is pitching $18,000-a-year enforcement jobs that pay only half of what a police officer makes in such places as Santa Clara.

The National Institutes of Health, which conducts and oversees the country's most important medical research programs, struggles with recruiting not necessarily because NIH works in high-cost locales but because it needs high-skilled, high-priced talent. According to Dr. Anthony Fauci, whose duties include directing the NIH Office of AIDS Research, the NIH hasn't succeeded in recruiting a senior research scientist from business or academia in 10 years.

That kind of record, in technical agencies ranging from NASA to the Environmental Protection Agency and the Food and Drug Administration, has forced an ironic option: contracting the work out to the private companies that employ those unattainable scientists, thus paying their salaries anyway.

The salary issue is so central to all the government's other personnel problems that even outgoing Secretary of Defense Frank Carlucci, one of the most respected civil servants of his generation, had to leave government for a time in the mid-1980s to earn enough money to put his children through college.

'Think twice'

In a recent interview, he said he has advised his son, now in the Navy, "to think twice" before deciding on a government career.

He is not alone. The 5,000 high-ranking federal managers of the Senior Executive Service were asked in a General Accounting Office survey last year if they would recommend a job in the federal government to someone starting a career. Only 13 percent said yes.

For a generation of Americans already contemptuous of the federal government, the condition of the 2 million-plus non-postal civilians on its payroll might not seem an especially burning issue.

But after 12 years of "bureaucrat bashing" by the Carter and Reagan administrations, respected voices in government, business and academics have begun to speak with real urgency about the need for the next administration — run by career bureaucrat George Bush — to improve the working lives of the federal labor force.

> U.S. government workers have lost more economic ground in the last 20 years than any other major occupational group.

For, they say, if you don't like the government you have now, wait and see what happens if continued low pay, public disdain, depressed morale, erratic management, budget cuts and private-sector competition leave the government with a labor pool limited largely to the already wealthy, the ideologically zealous and the marginally competent.

Group urges raises

Hoping to prevent that sort of outcome, the independent group that advises the president on top federal salary levels last month recommended huge pay increases: congressional salaries up from $89,500 to $135,000; raises for Supreme Court justices from $110,700 to $165,000; proportionate increases for most federal career executives, who now top out in the low $80,000s; and by implication, comparable raises for those below them as well.

Last week, President Reagan accepted that argument — ignoring jokes on the talk shows and anger in the letters columns — and urged Congress not to oppose the increases and allow them to become effective in 30 days.

But as large as the suggested raises are, they essentially would square federal salaries with inflation. U.S. government workers — especially those at the top of the scale — have lost more economic ground in the last 20 years than any other major occupational group in the country. Today, their pay is, on average, 24 percent less than that of their private counterparts.

What's more, the big raises would go to only 833 federal managers — the other 1,654 people who would get raises work for either Congress or the judiciary — and Reagan's latest budget calls for raises of just 2 percent for lower-ranking workers.

The consequences for government employees in fields that command high pay in the private sector have been dramatic.

For example, when U.S. District Judge Frank Kaufman's salary went to $89,500 last year, he finally matched the figure he was making when he left private law practice in Baltimore to become a federal judge — 22 years ago.

To equal his late 1960s purchasing power, Kaufman, senior judge of the U.S. District Court in Baltimore, would have to be making nearly $125,000 today; in effect, his real income has dropped by more than 28 percent. Kaufman's new salary, if the raises take effect, would be $135,000.

"I expected, obviously, to lose some money," Kaufman said, "and I was quite prepared to do it. . . . But frankly, you find yourself living on a different kind of basis than you ever expected."

Whatever the mathematical facts of life for people like Kaufman, though, the firestorm of public protest that greeted President Reagan's endorsement of the salary increases last week suggests that a lot of people — notably, such critics as the National Taxpayers Union and Ralph Nader — believe government workers are overpaid already.

This is, after all, a country whose average wage earner makes $22,000. In the words of Joseph Patti, western regional director of the federal Office of Personnel Management, "We have difficulty making the general public feel sorry for somebody making $75,000."

Comparing pay

But as the commission's chairman, longtime Washington attorney Lloyd Cutler, said, "To illustrate in terms most citizens will understand, we will have to decide whether the chief justice of the United States should continue to be paid less than half the average salary of an NFL nose guard."

Few candidates for the Supreme Court would likely turn down the job because of the money, but filling judicial positions below the Supreme Court level has become increasingly difficult at existing pay levels. One recent appellate judgeship finally was accepted by the 11th candidate offered the job.

"Some people feel that the way we're going, government could become the employer of last resort," said Roslyn Kleeman, who supervises the workforce studies of the government's watchdog agency, the General Accounting Office.

Kleeman said the GAO has been unable to prove conclusively that the quality of federal employees has diminished in recent years, but she has sharp concerns about the possibilities of declining competence in years ahead:

"Do you want a cure for cancer to be developed by employees who chose this as their last resort? Or take clean air, or drug enforcement. Or do you want your meat inspected by the lowest level employee, your drugs tested by low-quality employees? You could go through the whole government manual that way."

Some might say the government workforce already fits her description. The stereotype of vast numbers of lazy, unresponsive, detail-bound bureaucrats sitting out their years waiting for fat pensions already is one of America's most broadly shared images.

Retired Comptroller General Elmer Staats, the "bureaucrat's bureaucrat" who ran the GAO for 15 of his 42 years in government, disagrees with the bureaucracy bashers. But he does think performance might be deteriorating, and he thinks the solution might not lie in money so much as improved job satisfaction.

Indeed, when satisfied civil servants talk about the rewards of government work, they often describe them less in dollars than in terms of personal satisfaction, of important work, of public service.

Glenn Fuller is a 12-year park ranger for the National Park Service, site manager of Muir Woods National Monument north of San Francisco. For overseeing the park's redwood grove and the 1.6 million people who visit it each year, Fuller makes less than $26,000. For him, that's enough. As he said, "I enjoy what I'm doing, and I'm glad to be able to say that."

But not everyone in government goes to work in a redwood forest.

Nancy von Behren, a former NASA budget analyst, labored for several years in "a big bureaucracy. There was a lot of paperwork, and still to this day I can't say . . . where did it go, what did it do?

"Most people around me were very negative. The very scary thing was I watched them for three years say, 'I've got to get out of here, I've got to do something else,' and they never did anything."

Finally, von Behren quit after

being refused a promotion that she said her immediate supervisor supported. Soon afterward, she was making twice her $15,000 government salary as a saleswoman in the Cupertino computer store she now manages.

Political appointees leave

Even political appointees, who typically get the most desirable jobs in government, lately have been leaving after an average of only 18 months. Some didn't like managing in the gumbo of government procedure; some were losing money or wanted to cash in on their government experience; some left because of personal scandal. Some were dismissed, some never planned to stay. Whatever the reason, as a group they left during the Reagan years faster than in any recent administration.

Those rapid departures aren't just disruptive as a matter of management. They reinforce the feeling of many veteran federal employees that the work just isn't what it used to be — especially for people who experienced government in the 1960s, when John F. Kennedy, the Peace Corps, the civil rights movement, the War on Poverty and the urban crisis were energizing, fresh and new.

Fully half the people in the Senior Executive Service — the government's top managers — will be eligible for retirement within the next five years. When the GAO asked them in 1987 about their plans, more than half of them said they would not stay on, though some will be only in their early 50s.

A sense of the downside of government employment appears to be having a similar effect at the entry level as well.

When deans of 72 universities responded to a recent government survey about student interest in federal careers, three-quarters of them mentioned "the negative public image of the bureaucracy" as one of the reasons their students didn't gravitate toward the government.

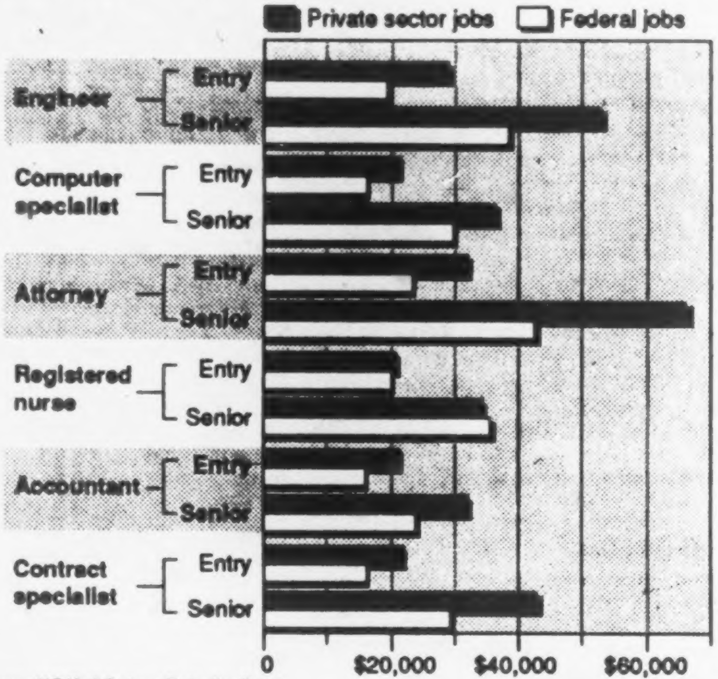
Recruitment decentralized

There is another reason, too. Thousands of young adults have launched careers in the last few years without much awareness that the government has jobs to offer, in part because the federal government's central employment agency canceled its college recruiting program in 1982. For the next five years, the Office of Personnel Management left it to individual agencies to attract future employees from the nation's campuses.

That kind of policy has struck people like former federal executive Howard Messner simply as "stupid." Messner left government after 24 years in eight agencies, including the assistant directorship of the Office of Management and Budget, to take a private job with an engineering association. Though he left because of personal finances and fading satisfaction, Messner has retained strong attachments to public service and is concerned that good people are not flowing into government fast enough to make up for those leaving.

"I'm worried now that we've cut off our oxygen supply," Messner said. "For eight years we cut back our ability to attract and retain young people."

Whatever the problems of recruitment, pay, management and job satisfaction, though, many people in and out of government say that the appeal and rewards of federal service won't change significantly until the public's view of government work and workers becomes more positive. That, they say, will take improved government performance but also consistent, visible support from the president — support that was largely absent from the Reagan, Carter and Ford administrations.



Federal and private paychecks

Here's how average entry-level and senior-level federal salaries lag behind comparable jobs in the private sector.

Source: U.S Merit Systems Protection Board

Knight-Ridder News Service

Hiring skilled people is likely to get harder

By Gary Blonston
Mercury News Staff Writer

WASHINGTON — Senior NASA executive Noel Hinners thinks about the $275,000 "feeler" he recently received from a private company willing to more than triple his current salary, and he wonders how the space agency will maintain its high-level workforce without high-level pay to match.

Constance Horner, the government's top personnel official, thinks about tight federal agency budgets, and she wonders how capable, goal-oriented people will be persuaded to work for a government that needs "efficiency of service" more than creativity or innovation.

Larry Goodwin, personnel director of the Department of Labor, thinks about the 1,800 job applicants who took a recent federal clerical test in New York City — and the 1,300 of them who failed — and he wonders how the federal government will find enough competent people to staff even its entry-level office jobs.

Examples like that underline a warning by the Hudson Institute, a Washington research organization that studied federal employment in the year 2000. The researchers found that even as the federal government's wages, its image and its reputation as a place to succeed and advance have been falling farther and farther behind the private sector, it faces increasingly intense national competition for skilled, well-educated workers.

"Unless steps are taken now to address the problem," the institute recently told the Office of Personnel Management, "the average qualifications and competence of many segments of the federal workforce will deteriorate, perhaps so much as to impair the ability of some agencies to function."

And as bad as the problem is now, it's likely to get starkly worse over the next decade. Here are some of the reasons:

✓ To solve scientific and technical problems ranging from hazardous-waste disposal to the AIDS epidemic, to monitor larger numbers of private contractors and to execute policy in everything from child care to insider trading, the federal government needs people with more education and training than do typical private employers. Already, half the government's labor force is professional, technical and administrative — twice the proportion of the workforce at large.

Hudson researchers say the government will have to add 157,000 professional, technical and administrative people by the year 2000 and replace all the ones who leave. These will be the same people most sought by private industry and state and local governments.

✓ At the same time, there will be fewer people entering the labor market. Today there are more than 15 million workers — the last of the baby boom generation — ages 20 to 24. By the end of the century, there will be 1.7 million fewer, an 11 percent drop.

Of those young workers, says the Labor Department's Goodwin, 700,000 or more will be high school dropouts and, he says, "700,000 additional who, when they graduate, can't read their diplomas. . . . This is the beginning of a serious problem for the federal government."

He and others fear that, in the competition for that shrinking supply of young workers, the government could be stuck mostly with not-very-capable leftovers.

✓ This problem will be compounded by the fact that the government workforce, with an average age of 41, is five years older than the national average, so more federal workers will be retiring sooner. Among the reasons for that age difference: An army of employees entered an expanding government in the 1960s, while many young federal workers were the first victims of personnel cutbacks in the 1980s.

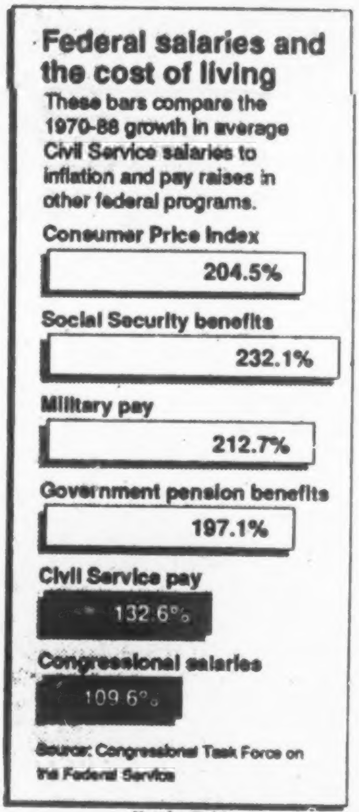
The upshot is that just after the year 2000, a vast exodus of retiring civil servants could begin, with a shortage of younger people behind them in the pipeline.

As Horner at the Office of Personnel Management said, "First, they need enough money so they can have two kids in college and go on living decent middle-class lives, and two, we have to provide more 'psychic income.' "

That "psychic income" comes from the same places it does for all workers — from a sense of accomplishment; from being part of an organization with worthy goals; from fair, competent management.

It reports major improvements already in the Internal Revenue Service, the Environmental Protection Agency and the Social Security Administration because of modern data processing equipment to improve productivity, better financial management, more management accountability, better long-term planning, improved training programs and numerous other enhancements of work and the workplace.

But the GAO also calls for what the Hudson Institute recommended: a more flexible salary system to pay what people need in high-cost areas and in high-skill jobs, and enough money in all categories to attract the competent people the government needs.



Federal salaries and the cost of living

These bars compare the 1970-88 growth in average Civil Service salaries to inflation and pay raises in other federal programs.

Source: Congressional Task Force on the Federal Service

Knight-Ridder News Service

Paying the price of public service

Lawyer's love of his work compensates for financial beating

By Gary Blonston
Mercury News Staff Writer

WASHINGTON — Lawrence Wallace has argued 104 cases before the U.S. Supreme Court, more than any other lawyer in active practice.

On the wall of his office is a photograph of retired Justice Lewis Powell, inscribed, "I . . . will miss your arguments. They rank among the best the court hears."

Wallace has been receiving that sort of recognition for a long time. He was editor of the law review when he was at Columbia University. His first job was as a law clerk for the late Supreme Court Justice Hugo Black.

Now 57, Wallace is at the financial pinnacle of his career. He makes $75,500 a year — roughly the same as a first-year lawyer at a top New York law firm.

If that doesn't seem like much for someone of such background and legal repute, it is because Wallace is a deputy solicitor general, and the only cause he argues is the cause of the U.S. government.

"I enjoy my work very much," he says. "There's no other law office in the country that can specialize in Supreme Court litigation."

And for that, he is willing to take the relative financial beating of living in high-priced Washington on a government lawyer's income and arguing case after case against some of the best-paid attorneys in America. "I'm not married, I have no dependents, and that makes a big difference to who stays in the federal service," he said.

"But it's one thing to deny myself, and it's another for lawyers in the office to deny their families, and to put their children through school. Most of our lawyers do leave after three or four or five years, often with regret. . . .

"The difficulty now is whether we're seeing a dying generation of senior career people with top credits willing to devote their career to government service."

Almost all Wallace's former associates in law school and the solicitor general's office are making more on the outside than he is these days, but with a small twinkle he said, "I'm certainly not a hardship case. There is an argument to be made that lawyers in private practice are overpaid.

"I'm also a professional musician (violin for the National Gallery Orchestra), and I assure you all my musician friends think I'm lavishly paid."

So, as he knows, does much of the public, and he knows what they say about government employees. That seems to bother him more than the money. "I don't always appreciate the things that are said about the bureaucracy," he said. "I do a lot of hard work around here."

Side trip into private sector let Carlucci continue federal career

By Gary Blonston
Mercury News Staff Writer

WASHINGTON — Frank Carlucci had done it all — career Foreign Service officer, ambassador and high-level executive in the Office of Economic Opportunity, the Office of Management and Budget, the Department of Health, Education and Welfare, the CIA and the Department of Defense.

He had prospered under Democratic and Republican administrations, and he had received virtually every award available to a distinguished civil servant.

"And when I was down to the last $100 in my bank account," he said in a recent interview, "when I had a son in college, a daughter who had just graduated, a 3-year-old daughter coming up, at age 52 I said, 'This is crazy. I can't do it. I can't do justice by my family.' "

And so, in 1983, he left the government. Carlucci retold that story recently while sitting in his office, the office of the secretary of defense. Clearly he couldn't stay out of government long, and in fact he didn't need to. It took him only four years — as president and then chairman of Sears World Trade Inc., and as a director of several other companies — to make a couple of million dollars.

"Just for attending 24 board meetings, I get a pension equal to half my federal pension after 26 years," he said. He also was paid $386,000 his last year with Sears, plus $754,000 in termination pay when he responded to President Reagan's call in 1987 to return to govern- he didn't need to. It took him only four years — as president and then chairman of Sears World Trade Inc., and as a director of several other companies — to make a couple of million dollars.

"Just for attending 24 board meetings, I get a pension equal to half my federal pension after 26 years," he said. He also was paid $386,000 his last year with Sears, plus $754,000 in termination pay when he responded to President Reagan's call in 1987 to return to government. He came back as assistant to the president for national security affairs, then became defense secretary, earning $89,500 a year.

Carlucci is leaving the government again as the Bush administration takes over later this month, and he is concerned that the problems he encountered could linger to trouble a generation of future federal executives as well.

"I think it's a shame we can't find a way to enable people in their 50s who have families to make ends meet while they have children in college without going into debt," he said.

"Nobody comes in to get rich. We don't need million-dollar bonuses. . . . We just need to hold off the bill collectors. . . .

"Salary isn't the only thing that tends to discourage people. . . . Equally significant, people entering the executive branch are finding it increasingly hard to get the job done."

He lays much of the blame on Congress. "If they want to play politics with this, they've got the best of worlds," he said. "Refuse to raise salaries, then slam (the quality of) the executive branch and do more congressional management."

Knowing all that, would he repeat his life in government?

"If I thought I could repeat that career, I'd do it. But the family sacrifice and the financial sacrifice and the difficulty of achieving goals would certainly make me think twice."

L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

May 31, 1989

Honorable William D. Ford
Chairman, Committee on Post Office
and Civil Service
United States House of Representatives
309 Cannon House Office Building
Washington, D.C. 20515-6243

Dear Mr. Chairman:

During recent hearings by the House Post Office and Civil Service Committee several Members asked judicial witnesses about media coverage of the debate surrounding judicial compensation. I thought the enclosed material might provide insight into coverage of the issue.

The first package of information contains editorials or opinion columns. You may find of interest the fact that nine of these articles appeared in newspapers that are among the top 22 in national circulation. The second package of clippings provides examples of judges who publicly have expressed their views on pay and ethical issues, including some who have intimated their intention to leave the bench.

Please do not hesitate to contact me if we can be of further assistance during your Committee's review of this important issue.

Sincerely,

Ralph

L. Ralph Mecham
Director

Enclosures

(NOTE: The following newspaper articles were ordered placed in the record. Other articles submitted were retained in the hearing file.)

San Francisco Daily Journal 5/22/89

Judicial Pay, in the End Will Draw Ideologues

By LAWRENCE GREY

A recent hearing on an injunction involving Eastern Airlines and the pilots' union presented an interesting juxtaposition. A group of pilots, represented by labor attorneys, contested an action by airline executives, who were also represented by lawyers. Everybody in the courtroom was making substantially more than $100,000 — except the judge.

Earlier this year the Commission on Public Service recommended that federal judges receive a substantial pay raise in order to keep and attract qualified people to the bench. Opponents of the raise have pointed out that whenever a vacancy in the federal judiciary occurs, there is an unseemly scramble to get the appointment. Both are correct, but they are talking about two different things.

Lawrence Grey is a judge on the 4th District Court of Appeals in Ohio.

There are basically three sources of federal judges: law school faculties, the state judiciary and lawyers in private practice. When the entire benefits package is considered, both tenured law professors and state judges receive nearly the same compensation as federal judges.

A successful practicing lawyer will have to take a pay cut; the only question is how great. One who makes more than $200,000 a year and participates in a 401(k) program has to seriously consider whether his or her family can live on less than half of that.

So where do all these applicants for federal judgeships come from? Simply put, federal judges have enormous prestige and power. That's what motivates people to take federal judgeships, and the compensation is secondary.

This is precisely where the pernicious effect of low judicial salaries takes effect. When the salaries are such that the best people take themselves out of the running, the field is left to those primarily interested in power — ideologues who will take the job regardless of what it pays.

The effect of low salaries is even greater on sitting federal judges. Initially, the prestige of the appointment is satisfying and the work is challenging. But being a judge is still only a job, and even the judge who enjoys his work and is good at it watches his purchasing power shrink as his employment opportunities increase. Thus we lose experienced people.

When we reach the stage where compensation for federal judges is such a disincentive that it undermines all other professional incentives, we end up with a less competent, less qualified and less professional federal judiciary. As the commission recommended, federal judges' salaries should be voted on independently of congressional salaries, and federal judges should get a raise.

26A The Miami Herald / Saturday, April 8, 1989

The Miami Herald

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Raise judges' pay

AS VOLCKER RECOMMENDS

IF THERE is any member of Congress who believes that Federal judges should *not* get the 25-percent pay raise that would restore their 1969 purchasing power, he ought to explain why. It won't do merely to rest on the spiteful idea that nobody else should get a raise until the elected Federal officeholders get one. This issue demands reasons.

Paul Volcker, former chairman of the Federal Reserve Board, chaired the blue-ribbon private-sector National Commission on Public Service. It studied the issue of Federal pay raises after Congress retreated in humiliation from public indignation against its own salary increases.

Mr. Volcker concluded that unless Federal judges and top executive-branch employees get a 50-percent raise by 1991, "America will be left with a Government of the mediocre. . . . Effective government in the end depends upon its ability to attract talented people up and down the line." He spoke of "crippled nuclear-weapons plants, defense-procurement scandals, leaking hazardous-waste dumps, near mid-air collisions, and the collapse of many S&L institutions" as examples.

Nowhere is the danger greater than in the judiciary, and nowhere is it easier to meet. President Bush has embraced an interim plan to increase the jurists' current $89,500 salary by 25 percent immediately. There is simply no excuse for the legislature's dumping more work on the courts through drug and other new legal initiatives while allowing judges' buying power to erode through inflation every year.

Mr. Volcker's commission rightly asks for other reforms to accompany the across-the-board raises. It seeks a reduction in the number of political appointees, for example, and some regional adjustments to reflect the diverse cost of living in various parts of the nation. The Volcker group also urged scholarships for 1,000 college students who commit to public-service careers. Those changes will take time.

There is no need to wait, however, on the basic points. Congress first should separate its own salaries from those of career Government professionals. Then it should grant the judges' 25-percent increase immediately, with the other 25 percent to come next year, when other Federal professionals and executives ought to get the general reform that Mr. Volcker recommends.

They Deserve a Raise

We Americans are the people of an idea and not of blood or tribe.

We have come from many places and believe many different things. For that reason, we rely less than other nations on the unspoken consensus born of custom and tradition. In their place we have a written Constitution whose principles are elaborated in a dynamic code of law. To foreigners, the legal system through which we interpret that Constitution and enforce those laws often appears baroque and contentious. Sometimes it is. But it also is an historic engine of equality and equity. Faith in our courts and their judges is an essential article in the American creed.

But while judges, particularly federal judges, stand high in the public's esteem, they rank rather low on the legal profession's payroll. That is why we support Chief Justice William H. Rehnquist's recent call for Congress to vote the federal judiciary a 30% raise.

The chief justice made his request at a rare press conference, called after Congress defeated a measure that would have given a 50% pay increase to its members, top officials of the executive branch and federal judges.

Rehnquist, however, made a convincing case for letting a judicial pay increase stand or fall on its own merits. He called the situation urgent, and facts bear him out. Over the past 20 years, inflation has outpaced judicial pay raises by 223%. While federal judicial salaries now range from $89,500 for a district judge to $115,000 for the Chief Justice of the Supreme Court, private-sector legal salaries have skyrocketed. Major law firms in Los Angeles currently pay their partners more than half a million dollars a year, and at big city firms across the country, first-year lawyers often earn more than $80,000.

Rehnquist argued that the growing gap between judges' salaries and those of the lawyers who appear before them "poses the most serious threat to the future of the judiciary and its continued operations that I have observed during my lifetime." He said that without a pay raise, federal judges, who are appointed for life, increasingly may use the bench as a step on the ladder toward lucrative private careers. The American Bar Assn. believes that a quarter of the country's more than 1,000 federal judges may choose to step down for financial reasons.

This is a telling point, for, as the chief justice pointed out, the federal tradition of lifetime judicial service "gives you a different kind of judge, someone simply devoted to judging rather than looking out of the corner of his eye for the next political opportunity that comes along."

LOS ANGELES TIMES
MARCH 28, 1989
page 6 part II

THE ATLANTA CONSTITUTION

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PAGE 11A, WEDNESDAY, MARCH 22, 1989

Clemency, Please, for the Federal Judiciary

William H. Rehnquist, chief justice of the U.S. Supreme Court, did something last week that no other justice has ever done. He walked into the court building's West Conference Room, stared into the lenses of television cameras and made a 20-minute plea for a pay raise.

In effect, the federal judiciary is throwing itself upon the mercy of American public opinion, and it deserves our sympathy.

Mr. Rehnquist says judges are willing to "accept the lessons of history" and live with the congressional defeat of a 51 percent pay raise last month.

That plan — which also included fatter paychecks for members of Congress and executive-branch employees — died in a frenzy of populist indignation. The chief justice is hoping Americans will look more kindly on the 30 percent idea. (Under this plan, the yearly salary of the nation's 576 District Court judges would go from $89,500 to $116,350.)

The chief justice may be right. Not only is the new plan cheaper, it has also been unhitched from congressional and executive salary increases. The last time out, judges and bureaucrats were hurt by the brickbats intended for Congress.

Of all governmental groups up for a raise, judges are the most deserving. The market is one reason. A lawyer good enough for the federal bench can unquestionably make far more than $89,500 a year in private practice. Bright people will begin to turn down appointments and skilled jurists will start to turn in their robes if the difference between public and private pay gets wider.

Federal judges are not able to bolster their incomes with honoraria in the manner of congressmen. Nor are they like executive appointees who can use their government experience as a steppingstone to fancier careers in the private sector. Most federal judges already have made their mark in the private sector. Most continue in their jobs because they enjoy the responsibility, the honor and the sense of service. They are asking for pay that, although greater than many people make, is modest by the standards of the profession.

It is in the nation's best interest that they get it.

Kansas City Star -
Kansas City, MO

Earnings of judges and young lawyers

KC Star 3-16-89

Chief Justice William Rehnquist's plea for more money for federal judges is described as "unusual," a measure of the urgency with which he views the judicial pay matter. That may be. Perhaps a chief justice is supposed to be above such mundane considerations as money.

The fact remains that $89,000 for a district judge is not a sufficient amount to attract many scholarly, successful and usually mature lawyers to one of the most important jobs in government. There are other enticements to the bench, of course: security, public respect and essential work. But the denominator of a livelihood cannot be ignored.

Where the chief justice and others go astray is in their continual nagging over how the starting salaries of outstanding law graduates stack up against judges' pay. Rehnquist says it is a "great anomaly" that law clerks can enter private practice and soon make more than the distinguished jurists they had been working for.

This is dangerous territory. The public already believes the country is awash with lawyers and that lawsuits are responsible for everything from outrageous medical costs to insurance premiums that won't let Boy Scouts put a float in a parade.

Is this the time to be talking about lads and lasses fresh out of law school pulling down nine or 10 grand a year? How much does a teacher make? The issue may become not that judges make too little but that lawyers make too much.

Fair pay for judges is a cause that can stand on its own. It needs no embarrassing comparisons with the riches of junior attorneys that are completely out of orbit with the incomes of millions of mere taxpayers.

10A • THURSDAY, MARCH 30, 1989 • USA TODAY

THE NATION'S NEWSPAPER
USA TODAY
PUBLISHED BY GANNETT ®

"USA TODAY hopes to serve as a forum for better understanding and unity to help make the USA truly one nation."

—Allen H. Neuharth
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DEBATE

Quality government requires better pay

Thomas Scott of Miami and George Kazen of Laredo, Texas, are two of our busiest federal judges.

The number of cases they tried last year in communities that are important to stopping the flow of drugs into the USA were among the highest in the nation.

But like many of their fellow judges, they are finding it hard to resist the lure of doubling or tripling their pay by going into private law practice. Especially since Congress wimped out and killed a 51% federal raise in February.

Now Congress has a chance to make up for that mistake.

On Wednesday, a commission headed by former Federal Reserve Chairman Paul Volcker recommended 25% raises this year for Congress, judges and top-level federal workers, and 25% in 1991. The recommendation is one of several to attract and retain talented people in public service. President Bush said he would ask Congress to raise federal pay soon.

Now, if our elected officials can just find the backbone to stand up to critics like Ralph Nader and the radio call-in show hosts who helped scuttle the last raise.

Federal pay lags 22% behind private salaries; starting salaries are $6,000 less.

That must change.

▶ A third of the 850 federal judges say they may put their robes in mothballs.

▶ The exodus of scientists from the National Institutes of Health is accelerating and replacements can't be hired.

▶ And the Environmental Protection Agency can't fill key engineering jobs.

If this "quiet crisis" continues, the commission warns, we'll soon be left with a government of mediocre people, locked into careers of last resort or waiting to move on.

Are those the kind of people you want making important decisions about the food you eat, the air you breath and the water you drink? Are they the kind of people you want negotiating defense contracts? Or presiding in complex trials that could affect our treasured civil rights? Of course not.

Congress deserves a raise in its $89,500 salary, too. But only if it bans the sleazy practice of accepting cash — called honoraria — from special interest groups for speeches.

Some people say it is naive to expect members of Congress to vote themselves a pay raise because it's too unpopular. That's a cop-out. Voting is Congress' job, popular or not.

The government cannot match the pay of private business. It shouldn't try. Nobody should expect to get rich working for the government. There are other rewards.

Even if members of Congress don't have the guts to raise their own pay, they must be smart enough to raise the pay for others who make our government work.

We get what we pay for.

Judges leaving

In the past 10 years, 44 federal judges have retired, more than the total since the USA was founded. The last three decades:

1980-88	38
1970-79	22
1960-69	3

Source: The Judicial Conference of the U.S.

U.S.NEWS

The quiet crisis in America's courts

Fed up with their $89,500 salary, federal judges are calling it quits

by Stephen J. Hedges

U S NEWS & WORLD REPORT, April 3, 1989

Things move with staccato precision in the Miami courtroom of Thomas E. Scott. Lawyers stand and sit and come and go when called on, as if in a hastened game of musical chairs. Defendants step forward and face justice delivered by a man who races through cases but somehow knows volumes about their dilemmas. In one day last week, Scott displayed his Dan Aykroyd brand of courtroom manner in hearings, conferences and pleas in a dozen cases that are vintage Miami: A failed savings and loan, a scheme to ship helicopters to Iraq and allegations that 24 Eastern Airlines baggage handlers sneaked cocaine aboard Miami-bound flights.

At 40, Scott is a *Wunderkind* of the federal bench. Appointed in 1985 as one of the youngest federal judges ever, he tried more than 100 cases last year, among the highest case loads in the nation. He is recognized as a young jurist with a quicksilver mind who is rarely wrong. There is one problem: Scott may not last long on the federal bench because he is close to being broke. He spends all of the $89,500 the government pays him for living expenses, keeping up his GM pickup truck and his wife's 1984 Olds Cutlass, buying food for his three German shepherds, one of which roams his chambers, and making some select repairs on a modest South Miami home he moved to in part because taxes on his first home, in upscale Coral Gables, got too high. He wears khakis or inexpensive poplin suits and $19.95 L. L. Bean button-down shirts. His wife, a Miami-area actress and model, works full time, though she would prefer to stay home more. Like all federal judges, Scott is appointed for life. He could earn three times his salary in private practice and has considered quitting. "I've got a commitment, and I'm trying to preserve it," he says. "I'm going to hang on as long as I can."

Scott's life on and off the bench is a good example of the dilemma riling the federal judiciary. The nation's 843 judges want a 30 percent raise. They want it because they say they cannot afford modern living at a satisfying level. Their earning power has declined more than 30 percent in the last 20 years as their salaries, $89,500 for district judges, $95,000 for appellate judges, $110,000 for Supreme Court Justices and

$115,000 for the Chief Justice, have undergone only slight adjustment.

Scaling back. For the judges of Miami, and federal judges everywhere, scrimping is infuriating. "A judge who wants to go on the bench for good reason should not have to change his style of living, as I've had to do," says Miami Judge William Hoeveler, widely regarded as one of the nation's best jurists. "Scaling back is O.K., but a judge ought to be able to send his children to college."

Many find it hard to sympathize with the judges. Their salaries, no matter how low in the legal world, are far higher than those of most Americans. Their jobs are secure and prestigious. "We don't really see any need for a raise," said David Keating, executive vice president of the National Taxpayers Union. "That's not to say these judges couldn't earn more in the private sector, but there are rewards to being a federal judge other than pay."

Judges like Hoeveler are not destitute, but they argue that the nation soon will not keep them with such a salary. From 1960 to 1970, three judges quit. Between 1980 and 1988, 40 judges resigned. Hoeveler grimly predicts that those with the lonely courage sometimes required on the bench will be replaced by political hacks and mediocre minds. "We can't afford to have judges on the bench who aren't as smart as the lawyers arguing before them," he says.

In February, federal judges watched a promised 50 percent raise, linked to a congressional-pay hike, lost in a firestorm of public criticism. That failure prompted Chief Justice William Rehnquist to hold an unusual press conference to plead for a raise: "We're saying offer them enough so they'll be able to educate their kids." Keating replies simply: "The rest of the country's doing it" on less. This week, the National Commission on Public Service, chaired by former Federal Reserve Chairman Paul Volcker, will recommend a 25 percent raise for judges, Congress and the Executive. Its reception is predictable: Warm in Washington, cold elsewhere.

On trial forever. In the harried grind of Miami, talk of a raise has thundered through the courthouse like waves crashing in from the nearby Atlantic. The 15 district and two senior federal judges handle more cases than any other federal district. In the year ended in June, 1988, they tried 799 cases, 130 more than the federal district in Manhattan, which has 27 judges. As 1989 began, the judges faced more than 2,000 criminal cases, about 1,000 more than at the start of 1982. The judges in Miami think that if anyone deserves a raise, they do.

Hoeveler is a good example. Hunched over his desk with the latest stack of motions, he picked through each case with his clerks one day last week. "This one is what our Latin friends might call *basura* [trash]," he says, crumpling up one unnecessary filing and winging it toward a wastebasket. He misses. Hoeveler has a patrician courtroom manner and a hearty sense of humor in chambers. He is supposed to be in trial this morning, but the defendant, accused of trying to smuggle $228,221 to Medellín, Colombia, pleaded guilty at the last moment. The defendant will likely get five months in prison. The government keeps the money. The day is filled instead with work on orders and hearings. But there is never a shortage of trials. Since January 1, Hoeveler has tried nine cases, more than some judges try in a year. His days are long, usually 12 hours. He spends 3 to 4 hours on weekends in a home office, writing orders and researching cases with the help of an Apple computer his son sold him, cheap. It is in his pleasant but modest home that the judge's 12 years on the bench, and his compensation, are hardest felt. Hoeveler, 66, says he is "absolutely broke" after raising four children. He cannot afford to fix his silver 1970 Porsche 911T, a car he bought while he was a private attorney. It has been in his garage for two years. He bums rides to work. His wife drives a road-worn Ford Escort. He has no outside income, though he recently contributed to a book entitled *The Florida Guide to Personal Injury.* "I don't think it's going to make the *New York Times* list," he jokes.

Getting hexed. In a different corner of Miami's historic courthouse, U.S. Magistrate Linnea Johnson has problems of her own. She is in the middle of a lengthy hearing to decide whether the U.S. Customs Service overstepped its bounds in a search of a house where cocaine was found. As the hearing begins, relatives of the Cuban American defendants, who practice the Santería religion, spread a light-brown powder on the courtroom's royal-blue carpet, trying to coax favor from God. Johnson orders the powder cleaned up and admonishes the family. Then, more powder appears in the lobby and, after a marshal issues a warning, a woman puts a verbal Santería hex on a witness. "That's it," Johnson says angrily. "No one leaves this courtroom until the hearing is over."

A 42-year-old mother of a 1-year-old girl, Michelle, and two boys who attend a local college, Johnson learned her tough act as a federal prosecutor. She is one of four female federal magistrates in South Florida and aspires only to be on the bench. Like her colleagues, she works long into the night, poring over paper work, setting bonds and detention conditions for defendants, most of them involved in the drug trade. Johnson gets 92 percent of a district judge's salary. After taxes, that is a $5,000 raise from her prosecutor's pay. Her husband is a real-estate broker, and the financial picture is not dire. But it is not good. "I have no savings," she said. "I went through my savings from private practice when I was with the U.S. Attorney's office. We spend everything I make."

The older judges of Miami's bustling federal court argue that the continued presence of judges like Scott and Johnson is vital to the integrity of the bench. They say there are distressing signs elsewhere that mediocrity is creeping into the system. In Miami, busy as it is, there is a new, ominous cloud on the horizon. Congress recently awarded the Miami U.S. Attorney 42 new prosecutors, a massive infusion of lawyers who will drive the number of cases, criminal and civil, drastically higher. Will a pay raise come? Perhaps. If not, Hoeveler says the future is clear: "You will end up with men who want little but to be called 'judge,' or lawyers who need jobs." ■

Senior Executives Association
Proposal for a
NATIONAL CIVIL SERVICE ACADEMY

Findings:

- Training is the simplest, most direct means to improve productivity in the Federal work force, as well as an effective incentive in hiring and retaining competent personnel;
- Training is an investment in people, an organization's most important resource, and its cost is extremely low in relation to overall payroll costs;
- The training of managers is a key link in the training chain, because the effectiveness of an organization's managers directly affects the productivity of all other workers;
- Despite this—
- There is at present little or no comprehensive, career-length planning for the development and training of Federal managers of domestic programs;
- What training currently exists is piecemeal, is lacking in direction, is largely agency-specific in content, and is usually too little and too late;
- Domestic program mid-level managers have no institutions to match the War Colleges and the Industrial College, which provide advanced training for mid-level military officers, or the Foreign Service Institute, which trains mid-level foreign service officers, or those of many private corporations;
- There are a handful of agency and private programs offering mid-level training for Federal managers, but their availability is limited to the exceptional or fortunate few;
- Most college and graduate programs do not adequately prepare Federal candidates for their jobs. They seldom provide proper grounding in fundamentals such as writing, analytic skills, or knowledge of the government and society to be served, and provide little or no training in government administrative specialties, such as procurement, personnel administration, financial management, or budget preparation;
- In short, most Federal managers are not well trained for government work before they are hired, and few are effectively trained after;
- The absence of broadly available, advanced training opportunities leaves to chance and job experience the opportunity for most potential senior Federal managers to acquire the skills and disciplines of sound management; without formal training opportunities, few assess their own needs, and fewer still have the drive to acquire the needed training on their own;
- Lacking some or all of the needed skills and disciplines diminishes the effectiveness and productivity of many managers and the organizations they manage; it also reduces agency heads' flexibility in filling critical management vacancies across Government, because of the narrowed range of fully qualified candidates;
- These inadequacies of existing Federal training and development programs adversely affect the productivity of the whole Federal work force;
- The consequent loss of productivity can no longer be accepted in a time of major budget deficits, resource constraints, and citizen concern about the effectiveness of the Federal work force;
- Federal managers are as well or better trained than the average private-sector manager, but they are less well trained than they should be to meet their responsibilities, and it would be highly cost effective to provide them proper training.

FOR THESE REASONS, THE SENIOR EXECUTIVES ASSOCIATION OFFERS THE FOLLOWING BILL:

A Bill

To authorize the establishment of a National Civil Service Academy to train promising, mid-level Federal managers for further advancement; to encourage improved Federal employee productivity and morale through better opportunities for career development; to provide incentives for the hiring and retention of highly competent Federal employees; and for other purposes.

- **Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled.** That Subpart C of Title 5, United State Code, be amended to modify chapter 41 and to add a new Chapter 42, "The National Civil Service Academy".

- **Section 1. Short Title.**

This Act may be cited as the "The National Civil Service Academy Act of 1985".

- **Section 2. Purposes.**

It is the purpose of this Act to authorize the establishment of a National Civil Service Academy in order to:

- Fill the gap in Federal training for domestic program managers by provision of intensive, in-residence, management training for promising, mid-level, Federal career managers to ready them for senior-level positions;
- Provide training of a level and scope that will be a domestic equivalent to the programs offered to military and foreign service officers through the War Colleges and the Foreign Service Institute;
- Provide a source for comprehensive, career-long planning for Federal employees' training and development, to help improve their productivity and quality of performance;
- Provide an expanded role and additional support for the existing Federal Executive Institute, and assign lead responsibility for continuing professional development of Federal domestic-program senior managers;
- Provide a center in the Academy for research and information on public service and public service education issues;
- Publish educational materials and research findings on public service, public service education, and governmental subjects, exempt from the publication requirements of 44 U.S.C., Sections 101 et seq., as amended;
- Assist agencies in the development and validation of employee candidate-selection mechanisms;
- Develop, in cooperation with other agencies, course materials on the workings and history of the nation's governmental institutions, suitable for use at high school and college levels.

- **Section 3. Amendment.**

Subchapter C of Title 5, United States Code, is amended to add at the end of Chapter 41 the following new chapter:

- **"Chapter 42--The National Civil Service Academy"**

- **"§ 4201. Definitions**

For the purpose of this chapter-

(1) "Academy" shall be the National Civil Service Academy;
(2) "agency" shall be as defined at section 4101 of this title;
(3) "employee" shall be as defined at section 4101 of this title;
(4) "Government" shall be as defined at section 4101 of this title;
(5) "training" shall be as defined at section 4101 of this title; and
(6) the definition of the words "training" and "training and development" shall not include the agency-specific programs under chapter 41 of this title, or the training and development programs of the uniformed military services, law enforcement services, the postal service, or the foreign service; however, individual members of those services may participate in any program described in this chapter, subject to appropriate interagency agreement."

- **"§ 4202. Exceptions, Limitations, and Restrictions**

The exceptions, limitations, and restrictions defined in Sections 4102, "Exceptions; Presidential authority", 4106, "Non-Government facilities; amount of training limited", and 4107, "Non-Government facilities; restrictions", of this title shall also govern this chapter."

– "§ 4203. Employee Agreements; Service After Training

(a) An employee selected for training under this chapter shall agree in writing before assignment to training that he or she will--

(1) continue in Government service after training for a period at least equal to three times the training period, plus such additional time, if any, as may be required under subsection 4208(b) of this chapter, unless he or she is involuntarily separated from Government service; and

(2) pay to the Government the amount incurred by the National Civil Service Academy for direct training expenses, plus the amount incurred by his or her agency for travel, relocation, and living expenses, if he or she is voluntarily separated from Government service before the end of the period he or she has agreed in writing to serve. Such payments shall be credited to the affected agencies as offsets to their training expenditures.

(b) Should an employee transfer to another Government agency from the agency that paid for travel, relocation and living expenses during training, the receiving agency shall be required to reimburse the donor agency for a share of the training expense based on remaining time pledged to be served, unless such reimbursement is waived by the donor agency.

(c) If an employee, except an employee relieved of liability by involuntary separation or by action under section 4102 of this title, fails to fulfill his or her agreement to pay to the Government the training and related expenses incurred by the Government, a sum equal to those expenses is recoverable by the Government from the employee or his or her estate by--

(1) setoff against accrued pay, compensation, amount of retirement credit, or other amount due the employee from the Government; and

(2) such other method as is provided by law for the recovery of amounts owing to the Government.

(d) The head of the agency concerned, under regulations prescribed under section 4118 of this title, may waive in whole or in part a right of recovery under this section, if it is shown that the recovery would be against equity and good conscience or against the public interest."

– "§ 4204. Establishment of National Civil Service Academy

A National Civil Service Academy shall be established. Its mission shall be the planning and implementation of a program of advanced management training for promising, mid-level Federal managers, to ready them for senior-level positions. The Academy shall be an independent agency, reporting to the President. It shall have an independent budget. It shall coordinate its activities with the Office of Personnel Management to assure that Federal managerial training needs observed by that agency are addressed. And it shall report annually to Congress, under section 4216 of this chapter, on its progress in meeting the purposes set for it by Congress."

– "§ 4205. Board of Directors

(a) The National Civil Service Academy shall be governed by a Board of Directors and its Chairman. Members of the Board and the Chairman shall be individuals who by demonstrated ability, background, training, and experience are especially well qualified to carry out the functions of the Board. Each proposed member of the Board or Chairman shall have had at least five years experience, either in a leadership role in the academic community, or in a senior-level, career position in Federal, State, or local government.

(b) There shall be six Directors appointed by the President. The Directors shall serve a term of six years, and not more than two terms each. In addition, the President shall nominate, with the advice and consent of the Senate, a Chairman of the Board, who shall serve a term of six years, and not more than two six-year terms. Two Directors shall be appointed or reappointed by the President in each even-numbered year, and a Chairman shall be nominated or renominated each sixth year. For the initial Board of Directors, two Directors and a Chairman shall serve for a term of six years, two Directors for a term of four years, and two Directors for a term of two years.

(c) Vacancies occurring before the end of a term of office shall be filled by Presidential appointment. If the vacancy is for the Chairman's seat, the appointment shall be with the advice and consent of the Senate. The new appointee shall serve out the remaining unexpired term of the vacant office. A Board member or the Chairman may serve beyond the expiration of a full six-year term, while awaiting a successor's appointment, but not for more than one year beyond the six-year term's expiration date.

(d) Members of the Board shall be entitled to receive the daily equivalent of the rate of basic pay in effect for Executive Level III of the Executive Schedule for each day (including travel time) during which they are engaged in the actual performance of the duties vested in the Board, plus reimbursement for travel expenses. The Chairman of the Board shall be entitled to receive the daily equivalent of the rate of basic pay in effect for Executive Level II, plus reimbursement for travel expenses. Reimbursement for travel expenses shall not exceed the expense limits established under chapter 57 of this title.

(e) Members of the Board and the Chairman may not be removed from office, except for gross inefficiency, neglect of duty, misconduct, or malfeasance in office."

- "§ 4206. Duties and Responsibilities of the Board of Directors

The Board shall have full authority and responsibility for the oversight and direction of the missions and staff of the Academy. It shall oversee the selection and activities of an Academy President, who shall select and supervise an administrative staff, arrange for the acquisition of suitable facilities, and develop and direct a faculty of able practitioners and learned scholars. The Academy President, the administrative staff, and the permanent faculty shall be Federal career civil-service employees. The Academy President, shall be paid at a rate equivalent to the rate set for Executive Level III, and shall have a Vice President, paid at a rate equivalent to the rate set for Executive Level IV. Twenty Senior Executive Service positions are authorized for senior administrative and teaching positions in the Academy.

- "§ 4207. Curriculum of National Civil Service Academy

(a) The curriculum of the National Civil Service Academy shall be developed by the Academy President and the faculty of the Academy, under the review of the Academy's Board of Directors. The Academy shall offer an in-residence program of approximately five months. The curriculum shall stress the acquisition of the practical skills, techniques, and disciplines needed for senior management in most Federal domestic programs, rather than theories of public management or agency-specific subjects. Examples of the intended subject matter are: (1) the ability to write and speak fluently, clearly, and concisely; (2) a detailed knowledge of the American government, economy, society, and heritage, together with an understanding of their relation to world affairs; (3) statistical and methodological skills for evaluating the progress and effectiveness of the programs and policies being carried out; (4) "hands-on" computer skills as every day working tools; (5) thorough familiarity with administrative specialties, such as procurement, personnel administration, financial management, and budget; (6) a firm grasp of the techniques and practices of leadership and the art of working through others to achieve organizational goals; (7) a clear understanding of the methods of policy analysis and policy formulation; and (8) the personal awareness and discipline to maintain a healthy and balanced relationship with family, community, and associates.

(b) Class sessions shall have frequent guest lecturers who are successful practitioners of the subject matter. They shall be drawn from the Senior Executive Service, current and former political appointees, the Congress and Congressional staff, the Judiciary, the press, Federal contractors and consultants, the academic community, and such other expert sources as may be appropriate."

- "§ 4208. Eligibility for the National Civil Service Academy

(a) This program shall be open to all Federal Civil Service career employees, subject to limitations on training-class openings, who have been employed by the Government for at least five consecutive years immediately prior to the start of training, who are at grades GS-12, GS-13, or GS-14, who are judged to have the potential for future selection to senior management positions, whose most recent annual performance rating is at least "Highly Satisfactory" (on a five-part rating scale of : "Outstanding," "Highly Satisfactory," "Satisfactory," "Marginally Satisfactory," and "Unsatisfactory") or equivalent, and who meet the admission standards of the Academy. A college degree is desirable, but not essential. The process of agency nomination shall be subject to review and change by the Board of Directors of the National Civil Service Academy.

(b) Persons from the private sector who are competitively selected to career positions at the GS-14 and GS-15 levels, and who have had little or no prior Federal career service, but who otherwise meet the eligibility requirements, may become eligible for Academy training after one year's service, provided they agree in writing to a post-Academy service period, in addition to that required under section 4203 of this chapter, of one month for each month they lack of the pre-Academy service requirement.

(c) Agencies may nominate candidates for this program at grade GS-15, who were promoted to that grade on or before January 1, 1988, or who serve in certain professional series that have higher-level entry positions.

(d) Nothing in this chapter shall be construed as requiring completion of the Academy program as a prerequisite for selection to general positions in the Senior Executive Service; alternative routes for acquiring the necessary competence and experience shall be encouraged and accepted.

(e) However, in competitive selections for career-reserved positions in the Senior Executive Service that take place after January 1, 1993, five preference eligibility points (against a total of one hundred points for all other selection factors) shall be awarded to candidates who have successfully completed the Academy training.

- "§ 4209. Capacity of the National Civil Service Academy

A capacity for two annual classes, with at least 2,000 students in each, shall be developed."

- "§ 4210. Limitations on Agency Participation

In order that all agencies may have equitable access to the training programs of the Academy, and that the Academy may maintain a reasonable balance of size for each of its two annual classes, each agency shall limit its nominations for each class to not more than five percent and not less than one and one-half percent of the number of its career employees in grades GS-12 to GS-14. Agencies with fewer than one hundred employees shall be exempt from these numerical requirements, but shall comply with their intent where feasible. Academy selections among agency-nominated employees shall be based on merit principals at each grade level, but may take into account the fair distribution of training opportunities among agencies over time.

- "§ 4211. Performance Ratings During Training Period

Exceptional performance by students during the training program shall earn an Outstanding performance rating from their agencies, upon written recommendation by the faculty of the Academy to the employee's agency. Successful completion of the Academy program shall earn students a performance rating equal to their last formal rating before attending. Unsuccessful performance during training, or failure to complete the program, may result in a rating lower than their previous performance rating."

- "§ 4212. The Faculty of the National Civil Service Academy

(a)The permanent faculty and administrative staff of the National Civil Service Academy shall be competitively selected members of the career civil service. The faculty shall be selected for their knowledge of the practical skills and techniques required to manage Federal agencies, for their demonstrated talent in teaching, for their ability to conduct research that improves the management of public services, and for other accomplishments in furtherance of the goals of public service. The faculty shall include a mix of proven practitioners and able scholars.

(b) In addition to permanent faculty, agencies are encouraged to lend senior executives to the Academy to serve as guest lecturers or to serve as temporary faculty (for up to two years). The Academy is encouraged to make use of the Intergovernment Personnel Act (as defined at sections 3371 to 3376 of this title) to develop a program of "Visiting Scholars" from the university community, and of "Visiting Practitioners" from State and local government, and other suitable sources.

(c) The ratio of students to faculty shall be kept low (with targets of not over ten to one for seminars and instruction sessions, and not over forty to one for lectures), in order to assure that each student has a maximum opportunity to learn."

- "§ 4213. Facilities for the National Civil Service Academy

(a) The Board of Directors of the National Civil Service Academy is authorized to lease temporary facilities, to acquire a permanent site, and to renovate, remodel, or construct new facilities for the National Civil Service Academy.

(b) The permanent site shall include instruction, seminar, and lecture facilities, faculty offices and research facilities, administrative facilities, library facilities, automatic data processing facilities, visual arts facilities, food service facilities, health-care facilities, a range of physical fitness facilities and grounds, in-residence students' quarters, and such other facilities as may be necessary and appropriate to the functions of the Academy. Facilities and quarters shall be served by a local area network ("LAN"), permitting access to data bases and other information exchanges. During training, each student shall be furnished with a personal computer to acquire skill in its use and to complete course assignments throughout the program. Teaching equipment shall be representative of the most successful of modern teaching techniques, and shall be brought up to date regularly.

(c) Both the permanent and temporary sites shall be selected from areas that are: (1) near a reasonable concentration of Federal operating programs and personnel, so that students may have access to, or make case studies, of actual working programs; (2) near one or more major universities, where students may have access to supplemental or special instruction or facilities, and where guest lecturers may readily be found; and, (3) near a community that offers a reasonable range of cultural, entertainment, and social amenities.

(d) The permanent site shall be planned for a student body of at least two thousand in each of the two annual classes, and for a faculty and administrative staff to accommodate that size student body. The temporary, leased facilities may be of lesser scale than those of the permanent site, taking into account a buildup period for operations to reach full scale.

- "§ 4214. Shared Expenses for the National Civil Service Academy

The cost of each student's attendance at the National Civil Service Academy shall be shared between the student's agency and the Academy's operating appropriation. The student's agency shall pay, from its training budget, all of the student's relocation, travel, subsistence, and living quarter expenses, as well as salary and related benefits. The Academy shall pay, from its annual appropriation, for all direct and indirect costs of training, and all other operating costs. The Academy shall arrange for the provision of meals and living quarters for students, and shall be reimbursed for such expenditures by the student's agency. The Academy shall keep its records of expenditure in such manner that the reimbursable costs of these items shall be readily separable from its other operating costs. In its annual appropriations request to Congress, the Academy shall report on: (1) average-per-pupil costs for direct and indirect costs of training; (2) other operating costs; and (3) reimbursable food and living-quarters expenses. Agencies' training budgets after Fiscal Year 1988 shall have a separate line devoted to the Academy program in their annual Congressional appropriations requests.

- "§ 4215. Timetable for the National Civil Service Academy, and the Federal Executive Institute

The following timetable shall be observed in the startup and implementation of the National Civil Service Academy--

(1) Nominations for the initial Board of Directors and Chairman of the National Civil Service Academy shall be made not later than 180 days from enactment of this chapter;

(2) Selection and lease of a temporary Academy site or sites shall be completed not later than fifteen months from enactment of this chapter, and shall end not later than six years from enactment of this chapter;

(3) The first class of students of the National Civil Service Academy shall begin training at the temporary facilities not later than two years from enactment of this chapter;

(4) Selection and acquisition of a permanent Academy site shall be completed not later than two years from enactment of this chapter;

(5) The first full class of the National Civil Service Academy shall begin training at the permanent site not later than six years from enactment of this chapter."

- "§ 4216. Reports

The Board of Directors of the National Civil Service Academy shall provide a progress report to the President and to Congress one year from enactment of this chapter, including a plan for carrying out the timetable in section 4215 of this chapter. Thereafter, it shall provided progress reports to the President and the Congress semiannually, on the anniversary date of enactment of this chapter."

- Section 4. Amendment.

Chapter 41 of Title 5, United States Code, is amended to add at the end the following new Section 4135:

- "§ 4135. Federal Executive Institute Missions

(a) The Federal Executive Institute shall have principal responsibility for the continuing professional education (other than agency-specific training) of domestic agency senior managers. The Insitute shall provide opportunities: (i) to refresh managerial skills and knowledge developed under the National Civil Service Academy, or equivalent programs; (ii) to acquire new managerial skills and techniques as they are developed and proven effective; (iii) to acquire information and analyses about new governmental programs and policies and new societal trends as they emerge. It shall be the site of a new policy development, analysis, and implementation training program for GS-15's. And it shall assist in the orientation and training of new political appointees and Schedule C's--

(1) Continuing Professional Education:

(A) The courses and programs in effect in Fiscal Year 1985 shall be continued, and augmented as necessary, to meet the needs of the continuing professional education mission defined in (i), (ii), and (iii) of the preceding paragraph;

(B) The Director and faculty of the Federal Executive Institute shall develop a plan to provide the opportunity for all active GS-15s and SESers employed before January 1, 1989 to be offered supplemental training in areas in which the manager seeks to achieve one or more of the levels of skills and knowledge taught under the National Civil Service Academy program.

(2) Policy Development, Analysis, and Implementation Program: The Federal Executive Institute shall develop and provide a new program of policy development, analysis, and implementation. It shall be an in-residence program of approximately ten weeks. The program shall be for GS-15's who have the potential to become members of the Senior Executive Service. Its curriculum shall be devoted to: (i) case studies of policy development and policy implementation; (ii) examination of historic policy changes across Government and within agencies; (iii) to studies of the factors that facilitate successful policy change and implementation; and (iv) to sharpening of the methodological and statistical techniques of policy analysis and evaluation. After January 1, 1993 candidates for admission to this program, who have completed the Academy program, or acceptable equivalent, shall be given preference, other selection factors being equal, in agency selection processes for candidates for this program. Any incumbent of the Senior Executive Service prior to January 1,1994 seeking admission to the program shall be given priority consideration by his or her agency and by the Federal Executive Institute.

(3) Training and Orientation of Non-Career Appointees:

The Federal Executive Institute shall offer training and orientation programs for new political and "Schedule C" appointees;

(b) Budget Authorization:

The Federal Executive Institute is authorized to include a new line item within the overall budget of the Office of Personnel Management for such sums as may be necessary to acquire and operate new or supplemental facilities, faculty, and staff to serve the programs described in this section.

- Section 5. Appropriations

There are authorized to be appropriated for the purposes of this Act, the following sums--

(1) For initial startup of the National Civil Service Academy, formation of its Board of Directors, hiring of startup staff, acquisition of a temporary site, and preparation of a report on the acquisition of a permanent site, the sum of $5,000,000;

(2) For permanent site acquisition, renovation, remodeling, and construction of facilities, and the acquisition of equipment, furniture, and fixtures for both the Academy and the new Federal Executive Institute programs, such sums as may be required;

(3) For annual operating expenses for the National Civil Service Academy, a sum equal to one-fifteenth of one percent (1/15 of 1%) of the sum expended annually for Federal payroll and fringe benefits shall be authorized for each of the fiscal years 1987, 1988, and 1989; and

(4) For annual operating expenses of the Federal Executive Institute, a sum equal to one-thirtieth of one percent (1/30 of 1%) of the sum expended annually for Federal payroll and fringe benefits shall be authorized for each of the fiscal years 1987, 1988, and 1989.

Simple Fairness:

The Case for Equitable Compensation of the Nation's Federal Judges

Submitted to the 1988 Commission on
Executive, Legislative, and Judicial Salaries
by the
Committee on the Judicial Branch
of the Judicial Conference of the United States

Judicial Conference of the United States
Committee on the Judicial Branch

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Appendix: Federal Judges Questionnaire (with tabulated responses)

I. Introduction and Overview

For the seventh time in 20 years, a Commission on Executive, Legislative, and Judicial Salaries will convene this year to consider revising the salaries of high-ranking Government officials, including Federal judges. The case for substantial increases has become even more compelling today than it was in past Commission years, dating back to 1968.

In each prior Commission year, inflation had severely eroded Federal salaries, and past increases did not come close to making up for that erosion. That remains true this year. In each prior Commission year, higher Federal salaries were considered necessary to attract and retain qualified professionals in high Government positions and to provide some small measure of comparability to salaries in the private sector. That remains true this year. In each prior Commission year, virtually every index of comparison pointed steadily upward — the cost of living, salaries of comparable professionals, court filings, and average judicial caseloads — while judicial salaries (and salaries of other high-ranking Government officials) progressed, in real terms, steadily downward. That too remains true this year.

Every one of the prior Commissions responded to these facts by recommending major salary increases for Federal judges and the other Executive and Legislative Branch officials covered by the Commissions' findings. The Commissions' proposals were, in each instance, grounded firmly in fact and attuned carefully to the needs — including the budgetary imperatives — of the Government and the nation. Unfortunately, the Presidents who received the prior Commission reports never adopted the full measure of increases recommended but instead scaled them back each year, and Congress only rarely has been willing to accept even these scaled-down Presidential proposals. A combination of budgetary constraints, perceived political considerations, random events and miscellaneous concerns has coalesced each year to frustrate implementation of the Commission's responsible, fair, and fully justified recommendations.

This year's Commission faces a more acute challenge than ever. In a real sense this is a watershed occasion, because of (1) the failure to substantially address compensation erosion in the past, (2) the fact that this is the last opportunity for this administration to fulfill its tentative commitment, (3) the prospect of no further opportunity for salary adjustment for four more years, and (4) the attitude of many members of the Federal Judiciary, born of an exhausted patience, to "wait-and-see" the results of this year's deliberations. A repetition of the pattern of the past will bring about a subtle and insidious diminution in the quality, stability and independence of the Federal Judiciary through increasing inability to attract the best of the legal profession, through an acceleration of the pattern of deliberate acceptance of judicial service for a short span of years followed by resignation to enjoy the fruits of private practice, and through an increasing loss of services of the most experienced judges through resignation or earlier election of senior status. We emphasize that, while we are deeply committed to the welfare of our colleagues, the ultimate focus of the Commission must be on the continued health and strength of our system of Government as it may be affected by a cheapening of the Judiciary, not to exclude that also of the Executive and Legislative Branches.

This submission is made on behalf of the Federal Judiciary by the Judicial Conference Committee on the Judicial Branch, which has been commissioned by the Conference to advise it on pay and benefits. We begin the submission with a brief history of the two decades of experience of the Quadrennial Salary Commissions, detailing their recommendations and subsequent action or inaction.

We then address the changes that have taken place in the judicial work environment and the prevailing attitudes of Federal judges, as derived from the most comprehensive and professional survey yet conducted of the Federal Judiciary. We explore the implications of these factors on the recruitment and retention of judges, and we describe the real costs of premature judicial departures.

We then present our analysis of the inadequacy of current judicial salaries from five perspectives:

- the real decline in judicial salaries;
- the additional impact of higher consumer costs;
- the more favorable treatment of the Judiciary in other jurisdictions;
- the superior salary and perquisites profile of the legal profession, which serves as the source of judicial candidates; and
- the increase in salaries for other governmental positions.

While everything in the above presentation specifically applies to our Article III judges (544 district judges and 156 circuit judges), it is just as relevant to our 271 bankruptcy judges and 290 full-time United States magistrates. There are facts particularly concerning these vital sectors of the Federal Judiciary that we submit in our penultimate chapter.

Finally, we set forth our concluding remarks.

In preparing this submission we built on the impressive volume of materials submitted to the 1986 Commission on Executive, Legislative, and Judicial Salaries by the Corporate Committee for Fair Compensation of the Federal Judiciary and the American College of Trial Lawyers, entitled Promises Made, Promises Still Unkept: Restoration of Inflation-Induced Salary Cuts for Top Government Officials (1986-87). A copy of that volume accompanies the current submission and may be consulted for more detailed historical information as well as for additional data on the harmful effects inadequate compensation has had on Federal judges and executive and legislative branch officials. The Committee also conducted a Federal Judges Survey designed to elicit information and views on a range of subjects pertaining to the Federal Judiciary. A copy of the survey instrument appears as an appendix, on which are recorded the tabulated responses to each question (which are also discussed more fully throughout this submission).

II. A Brief History of Judicial Compensation Under the Quadrennial Salary Commission Process

Twenty years ago the Commission on Executive, Legislative, and Judicial Salaries was created to bring a degree of fairness and regularity to the politically-charged issue of Federal compensation.[1] Informally known as the Quadrennial Salary Commission, this body consists of nine members appointed from the private sector by designated officers of the three branches of Government. The Commission is authorized to review, every four years, the salaries of high-ranking executive, legislative, and judicial officials (including Article III Federal judges) and to recommend to the President appropriate salary levels for these offices. The President then is to make his own recommendations to Congress, which could be approved or disapproved under a variety of legislative review mechanisms in effect over the past 20 years of the Commission's existence.

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[1] See Federal Salary Act of 1967, Pub. L. No. 90-206, § 225, 81 Stat. 624, 642 (1967), as amended, 2 U.S.C. §§ 352-59.

Tables 1 through 5 summarize the outcomes of all past Quadrennial Salary Commissions.[2] To place in perspective the recognized need for substantial judicial salary reform, Table 6 is included to set forth the current dollar value of past Commission salary recommendations for Federal judges. These tables reflect a disturbing pattern of delay, diminution or denial of equitable salary adjustments. From the standpoint of the Federal Judiciary, the results of the First Quadrennial Salary Commission were perhaps the most satisfactory. The First Commission recommended salary increases for Justices of the United States Supreme Court of between 65 and 70 percent, and of 52 to 58 percent for other Federal judges. The increases that ultimately took effect were significantly less generous but still substantial: increases of 52 to 56 percent for Supreme Court Justices and 29 to 33 percent for circuit and district judges. These salary levels provide a benchmark of fair compensation for these judicial offices. Unfortunately, in subsequent years salaries paid for these positions (and for other high-ranking Government positions) have gradually but markedly fallen from the benchmark levels.

The favorable results of the First Quadrennial Commission were not repeated in the Second Quadrennial Commission year. That year the Commission recommended increases of 25 percent for most offices, and the President proposed phased increases over three years totalling 22.5 percent. The Senate disapproved the recommendations, however, and so no salary increases occurred that year.

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[2] A detailed discussion of the history of salary adjustments for high-ranking Government officials appears in Appendix 2 of the 1986 submission to the Interim Quadrennial Commission, entitled Promises Made, Promises Still Unkept and included as an accompaniment to this submission.

The results of the Third Quadrennial Commission in 1976 shared some of the success of the First: the Commission recommended large increases, the President pared them back slightly, and Congress failed to disapprove them. Since real salary levels had been falling sharply in this period of high inflation, the 1977 increase helped to recover some of the ground lost from the 1969 benchmark salary levels.

Pay erosion continued throughout the 1970's, and the Fourth Quadrennial Commission responded by recommending compensating increases in 1980. But Congress rejected the President's recommendations. No increases resulted from the Fourth Commission's efforts.

The Fifth Quadrennial Commission elected not to make recommendations as to absolute salary amounts but to concentrate instead on reform of the salary adjustment process, which was necessary in light of the Supreme Court's decision in INS v. Chadha, [3] striking down legislative vetoes. The Commission recommended that the existing Federal Salary Act legislative approval provision be replaced with a process whereby Presidential salary recommendations would take effect within 30 days unless both houses of Congress disapproved them by joint resolution signed by the President, or unless a disapproval resolution survived a Presidential veto. Congress enacted the recommended reforms in 1985. [4] The Fifth Commission also proposed, and Congress agreed, that a one-time interim Commission be convened in 1986 to recommend salary adjustments under the revised legislative approval process.

3/ 462 U.S. 919 (1985).

4/ See Pub. L. No. 99-190, § 135, 99 Stat. 1185, 1322 (1985).

This Sixth (Interim) Quadrennial Commission was appointed in 1986, and the familiar pattern of scaled-back raises was repeated. The Commission urged large increases, the President pared them back substantially, and, because Congress failed to disapprove them in time, increases of ten to eleven percent for Federal judges went into effect in 1987.[5/] When he reduced the Sixth Commission's recommendations, President Reagan stated that his proposals represented a "first step in addressing the loss of real income" suffered by top Government officials and added that they would be followed by another salary recommendation before he left office. The disappointing level of increases resulting from the Sixth Commission's work thus provides participants in the upcoming Quadrennial Commission process with a firm foundation on which to build support for more substantial increases next year.

Since 1975, the Quadrennial Salary Commission process has been supplemented by occasional cost-of-living increases allowed to senior Government officials. The Executive Salary Cost-of-Living Adjustment Act[6/] provides for an adjustment in salaries for Federal judges and other high-ranking officials equal to the annual cost-of-living increases all other Federal white-collar workers receive. The adjustments go into effect automatically unless they are specifically rejected by Congress. Under the provisions of this Act, judicial salaries received small cost-of-living increases sporadically starting in

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5/ Under the Federal Salary Act of 1967, as amended, 2 U.S.C. §§ 352-59, the President's recommendations as to salary increases for high-ranking Government officials go into effect unless Congress disapproves them by joint resolution no later than 30 days after they are transmitted to Congress. In 1987, the 30-day disapproval period ended on February 4, 1987. Congress completed action on a resolution disapproving the President's recommendations on February 5, 1987. Since this action came after the expiration of the 30-day period, the recommended increases went into effect.

6/ Pub. L. No. 94-82, 89 Stat. 419 (1975).

1975. However, Congress often acted to deny such increases to judges and other senior officials. In those years when cost-of-living increases were revoked after their effective date, litigation on behalf of Federal judges successfully challenged the revocations. 7/ In other years, increases were denied in advance of their effective date and senior officials received no cost-of-living adjustments. More recently, the salutary effect of including Federal judges in the Executive Salary Cost-of-Living Adjustment Act was defeated by enactment of an overriding provision prohibiting "automatic" increases and requiring instead that Congress act affirmatively to authorize judicial cost-of-living raises. 8/ This has created an additional obstacle to providing judges' salaries with annual protection against inflation.

The above brief historical review demonstrates the uneven operation of the Federal salary adjustment process in the past. Five times during the last 20 years Quadrennial Commissions recommended major salary increases for positions included in their review. Each time, the President scaled back those recommendations, often cutting them to less than half of the amount urged by the Commission. And twice the Congress refused to allow even these modest proposed salary increases to go into effect,

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7/ Several Federal judges challenged Congress' effort to revoke the cost-of-living increases in 1976 and 1979 by withholding funding after the effective date of the increases. See United States v. Will, 449 U.S. 200 (1980). The Supreme Court agreed that this constituted a diminution of salary proscribed by the Compensation Clause in Article III of the Constitution, and the increases were awarded to judges retroactively.

8/ H. J. Res. 370, Pub. L. No. 97-92, § 140, 95 Stat. 1183, 1200 (1981). Although this provision appeared in an annual appropriations bill, the Comptroller General has construed it to constitute permanent law. Accordingly, Congress must affirmatively override this restriction in order for judges to receive the same cost-of-living increases paid to other Federal employees. For fiscal year 1988, Congress overrode section 140 but also limited cost-of-living increases to lower-paid employees. As a result, judges received no cost-of-living raises this year. H. J. Res. 395, Pub. L. No. 100-202, § 108(a), 101 Stat. 1329, 1329-434 (1981) (capping cost-of-living increases); id. § 406, 101 Stat. 1329-26 (authorizing judicial cost-of-living increases).

while rejecting several annual cost-of-living adjustments as well. The lesson of the past is that each actor in the quadrennial salary adjustment process must in turn support salary increases and work to achieve them if a favorable outcome is to occur.

The upcoming Seventh Quadrennial Commission can and should build on the legacy of prior Commissions. That can be done first by recommending salary increases that fairly reflect the stature of the affected offices and that will reasonably attract and retain the calibre of individuals this country needs to fill those positions. Strong Commission recommendations alone are not sufficient to guarantee equitable raises for senior Government officials. But they are a necessary first step that can pave the way for other participants in this process to follow in assuring that our nation compensates fairly those from whom we expect the most.

TABLE 1

RESULTS OF THE SALARY RECOMMENDATIONS OF THE FIRST QUADRENNIAL COMMISSION (1968)

	1968 Salary	Commission's Recommendations	President's Recommendations	Final Pay Rate	Percent Increase
EXECUTIVE BRANCH					
Vice President	-	-	-	-	-
Executive Level I	$35,000	$60,000	$60,000	$60,000	71.4%
Executive Level II	$30,000	$50,000	$42,500	$42,500	41.7%
Executive Level III	$29,500	$46,000	$40,000	$40,000	35.6%
Executive Level IV	$28,750	$43,000	$38,000	$38,000	32.2%
Executive Level V	$28,000	$40,000	$36,000	$36,000	28.6%
LEGISLATIVE BRANCH					
Speaker of the House	-	-	-	-	-
Majority & Minority Leaders	-	-	-	-	-
Senators & Representatives	$30,000	$50,000	$42,500	$42,500	41.7%
Comptroller General	$30,000	$50,000	$42,500	$42,500	41.7%
JUDICIAL BRANCH					
Chief Justice	$40,000	$67,500	$62,500	$62,500	56.3%
Associate Justices	$39,500	$65,000	$60,000	$60,000	51.9%
Judges-U.S. Courts of Appeals	$33,000	$50,000	$42,500	$42,500	28.8%
Judges-U.S. District Courts	$30,000	$47,500	$40,000	$40,000	33.3%

Notes:
- On February 4, 1969, the Senate defeated S. Res. 82, 91st Cong., 1st Sess. (1969) which would have disapproved President Johnson's salary recommendations Accordingly, the President's salary recommendations took effect for judges on March 1, 1969.
- The General Counsel of the Civil Service Commission advised the First Quadrennial Commission that its jurisdiction did not extend to the compensation of the offices of Vice President, Speaker of the House, and Majority and Minority Leaders. In 1975, these offices were added to the Commission's jurisdiction by the Executive Salary Cost-of-Living Adjustment Act, Pub. L. No. 94-82, §206, 89 Stat. 419, 423 (1975).

TABLE 2

RESULTS OF THE SALARY RECOMMENDATIONS OF THE SECOND QUADRENNIAL COMMISSION (1972)

	1972 Salary	Commission's Recommendations	President's Recommendations	Final Pay Rate	Percent Increase
EXECUTIVE BRANCH					
Vice President	–	–	–	–	–
Executive Level I	$60,000	$70,000	$73,500	$60,000	None
Executive Level II	$42,500	$53,000	$52,063	$42,500	None
Executive Level III	$40,000	$50,000	$49,000	$40,000	None
Executive Level IV	$38,000	$47,500	$46,550	$38,000	None
Executive Level V	$36,000	$45,000	$44,100	$36,000	None
LEGISLATIVE BRANCH					
Speaker of the House	–	–	–	–	–
Majority & Minority Leaders	–	–	–	–	–
Senators & Representatives	$42,500	$53,000	$52,063	$42,500	None
Comptroller General	$42,500	$53,000	$52,063	$42,500	None
JUDICIAL BRANCH					
Chief Justice	$62,500	$72,500	$76,563	$62,500	None
Associate Justices	$60,000	$70,000	$73,500	$60,000	None
Judges-U.S. Courts of Appeals	$42,500	$53,000	$52,063	$42,500	None
Judges-U.S. District Courts	$40,000	$50,000	$49,000	$40,000	None

Notes: - In his budget for fiscal year 1973, President Nixon recommended that a 22.5 percent increase be spread over a period of three years, raising the salaries 7.5 percent each year. On March 6, 1974, the Senate passed S. Res. 293, 93d Cong., 1st Sess. (1974) disapproving the President's salary recommendations. Accordingly, no salary increases resulted from the Second Quadrennial Commission's efforts.

- The General Counsel of the Civil Service Commission advised the First Quadrennial Commission that its jurisdiction did not extend to the compensation of the offices of Vice President, Speaker of the House, and Majority and Minority Leaders. In 1975, these offices were added to the Commission's jurisdiction by the Executive Salary Cost-of-Living Adjustment Act, Pub. L. No. 94-82, §206, 89 Stat. 419, 423 (1975).

TABLE 3

RESULTS OF THE SALARY RECOMMENDATIONS OF THE THIRD QUADRENNIAL COMMISSION (1976)

	1976 Salary	Commission's Recommendations	President's Recommendations	Final Pay Rate	Percent Increase
EXECUTIVE BRANCH					
Vice President	$65,600	$80,000	$75,000	$75,000	14.3%
Executive Level I	$63,000	$67,500	$66,000	$66,000	4.8%
Executive Level II	$44,600	$60,000	$57,500	$57,500	28.9%
Executive Level III	$42,000	$57,000	$52,500	$52,500	25.0%
Executive Level IV	$39,900	$53,000	$50,000	$50,000	25.3%
Executive Level V	$37,800	$49,000	$47,500	$47,500	25.7%
LEGISLATIVE BRANCH					
Speaker of the House	$65,600	$80,000	$75,000	$75,000	14.3%
Majority & Minority Leaders	$52,000	$65,000	$65,000	$65,000	25.0%
Senators & Representatives	$44,600	$57,500	$57,500	$57,500	28.9%
Comptroller General	$44,600	$60,000	$57,500	$57,500	28.9%
JUDICIAL BRANCH					
Chief Justice	$65,600	$80,000	$75,000	$75,000	14.3%
Associate Justices	$63,000	$77,500	$72,000	$72,000	14.3%
Judges-U.S. Courts of Appeals	$44,600	$65,000	$57,500	$57,500	28.9%
Judges-U.S. District Courts	$42,000	$62,000	$54,500	$54,500	29.8%

Notes:

- On February 1, 1977, the Senate tabled an amendment, S. Res. 39, 95th Cong., 1st Sess. (1977), which would have disapproved the President's salary recommendations. Accordingly, the President's salary recommendations took effect for judges on March 1, 1977.

- Although Congress rejected the Second Quadrennial Salary Commission's salary recommendations, the 1976 salaries listed above differ from the final salary resulting from the 1973 quadrennial review process due to the enactment of the Executive Salary Cost-of-Living Adjustment Act, Pub. L. No. 94-82, 89 Stat. 419 (1975). This act provides for an automatic pay adjustment to senior government officials (the same annual cost-of-living increases all other Federal white-collar workers receive), unless the increases are specifically rejected by Congress. On October 1, 1975, salaries were adjusted upward 5 percent under the provisions of this Act.

- In 1976, legislation to withhold funding for cost-of-living increases for senior government officials was enacted after the date on which the increases would have gone into effect. Several Federal judges challenged the withholding of funds as a diminution in judges' salary proscribed by the Compensation Clause in Article III of the Constitution. The Supreme Court decision in United States v. Will, 449 U.S. 200 (1980), ruled in favor of the judges and led to a retroactive cost-of-living increase for Federal judges in 1976. Salaries for that year ultimately rose to $68,800 for the Chief Justice, $66,000 for Associate Justices, $46,800 for Circuit Court Judges, and $44,000 for District Court Judges.

TABLE 4

RESULTS OF THE SALARY RECOMMENDATIONS OF THE FOURTH QUADRENNIAL COMMISSION (1980)

	1980 Salary	Commission's Recommendations	President's Recommendations	Final Pay Rate	Percent Increase
EXECUTIVE BRANCH					
Vice President	$79,125	$120,000	$96,770	$79,125	None
Executive Level I	$69,630	$95,000	$85,157	$69,630	None
Executive Level II	$60,663	$85,000	$74,191	$60,663	None
Executive Level III	$55,388	$80,000	$67,740	$55,388	None
Executive Level IV	$52,750	$75,000	$64,513	$52,750	None
Executive Level V	$50,113	$70,000	$61,288	$50,113	None
LEGISLATIVE BRANCH					
Speaker of the House	$79,125	$120,000	$96,770	$79,125	None
Majority & Minority Leaders	$68,575	$95,000	$83,867	$68,575	None
Senators & Representatives	$60,663	$85,000	$74,191	$60,663	None
Comptroller General	$60,663	$85,000	$74,191	$60,663	None
JUDICIAL BRANCH					
Chief Justice	$75,000	$120,000	$91,725	$75,000	None
Associate Justices	$72,000	$115,000	$88,056	$72,000	None
Judges-U.S. Courts of Appeals	$57,500	$90,000	$70,323	$57,500	None
Judges-U.S. District Courts	$54,500	$85,000	$66,654	$54,500	None

Notes: - In his budget for fiscal year 1982, President Carter recommended an immediate 16.8 percent pay raise for all senior officials, followed by an additional 5.5 percent cost-of-living increase in October 1981, for total increases of 22.3 percent. On March 12, 1981, Congress rejected the President's recommendations. See H.R. Res. 109, 96th Cong., 1st Sess. (1981); S. Res. 89 to 92, 96th Cong., 1st Sess. (1981). Accordingly, no salary increases resulted from the Fourth Quadrennial Commission's efforts.

- The Supreme Court decision in United States v. Will, 449 U.S. 200 (1980), led to retroactive cost-of-living increases for Federal judges in 1980. Salaries for 1980 ultimately rose to $92,400 for the Chief Justice, $88,700 for Associate Justices, $70,900 for Circuit Court Judges, and $67,100 for District Court Judges.

TABLE 5

RESULTS OF THE SALARY RECOMMENDATIONS OF THE SIXTH (INTERIM) QUADRENNIAL COMMISSION (1986)

	1987 Salary	Commission's Recommendations	President's Recommendations	Final Pay Rate	Percent Increase
EXECUTIVE BRANCH					
Vice President	$100,800	$175,000	$115,000	$115,000	14.1%
Executive Level I	$88,800	$160,000	$99,500	$99,500	12.0%
Executive Level II	$77,400	$135,000	$89,500	$89,500	15.6%
Executive Level III	$75,800	$130,000	$82,500	$82,500	8.8%
Executive Level IV	$74,500	$120,000	$77,500	$77,500	4.0%
Executive Level V	$70,800	$110,000	$72,500	$72,500	2.4%
LEGISLATIVE BRANCH					
Speaker of the House	$100,800	$175,000	$115,000	$115,000	14.1%
Majority & Minority Leaders	$87,600	$160,000	$99,500	$99,500	13.6%
Senators & Representatives	$77,400	$135,000	$89,500	$89,500	15.6%
Comptroller General	$77,400	$135,000	$89,500	$89,500	15.6%
JUDICIAL BRANCH					
Chief Justice	$111,700	$175,000	$115,000	$115,000	3.0%
Associate Justices	$107,200	$165,000	$110,000	$110,000	2.6%
Judges-U.S. Courts of Appeals	$85,700	$135,000	$95,000	$95,000	10.9%
Judges-U.S. District Courts	$81,100	$130,000	$89,500	$89,500	10.4%

Notes: - The Fifth Quadrennial Commission (1985) made no salary recommendations.

- On February 5, 1987, Congress completed action on a resolution which would have disapproved President Reagan's salary recommendations. See H. J. Res. 102, 100th Cong., 1st Sess. (1987). President Reagan signed the resolution into law on February 12, 1987. Pub. L. No. 100-6, §3, 101 Stat. 92 (1987). However, these actions took place after the expiration of the 30-day period for congressional disapproval provided in the Federal Salary Act, as amended, 2 U.S.C. §359. Accordingly, the President's salary recommendations took effect for judges on March 1, 1987.

- Cost-of-living increases for senior government officials took effect January 1, 1987, two months before the Quadrennial Commission increases took effect. The first column of salaries listed above, therefore, presents the salary levels in effect on January 1, 1987.

TABLE 6

JUDICIAL SALARY RECOMMENDATIONS OF THE QUADRENNIAL SALARY COMMISSIONS

	Commission's Recommendations	
	(Actual)	(1988 $)
FIRST COMMISSION--1968		
Chief Justice	$67,500	$217,030
Associate Justices	$65,000	$208,992
Judges-U.S. Courts of Appeals	$50,000	$160,763
Judges-U.S. District Courts	$47,500	$152,725
SECOND COMMISSION--1972		
Chief Justice	$72,500	$192,680
Associate Justices	$70,000	$186,036
Judges-U.S. Courts of Appeals	$53,000	$140,856
Judges-U.S. District Courts	$50,000	$132,883
THIRD COMMISSION--1976		
Chief Justice	$80,000	$155,776
Associate Justices	$77,500	$150,908
Judges-U.S. Courts of Appeals	$65,000	$126,568
Judges-U.S. District Courts	$62,000	$120,726
FOURTH COMMISSION--1980		
Chief Justice	$120,000	$155,776
Associate Justices	$115,000	$149,285
Judges-U.S. Courts of Appeals	$90,000	$116,832
Judges-U.S. District Courts	$85,000	$110,341
SIXTH (INTERIM) COMMISSION--1986		
Chief Justice	$175,000	$181,778
Associate Justices	$165,000	$171,391
Judges-U.S. Courts of Appeals	$135,000	$140,229
Judges-U.S. District Courts	$130,000	$135,035

Notes:
- Consumer Price Index estimated to average 118.0 in 1988.
- The Fifth Quadrennial Commission (1985) made no salary recommendations.

III. The Critical Nature of the Present Deliberations

Underlying the customary analyses of income erosion, escalating living costs, and comparative salary data, which are made available to all Quadrennial Commissions, is an apprehensive Federal Judiciary, squeezed by ever higher caseloads and other pressures on the one hand and by increasingly inadequate compensation on the other. Both factors underscore the urgency of responsible curative action this year. Without serious salary reform, the country faces a very real threat to a quality Federal Judiciary.

A. Pressures in the Judicial Environment

Although this submission is not the place for a complete description of the pressures currently facing the Federal Judiciary, a few observations are in order. One hallmark of the judicial environment in recent years is that during the past two decades of dwindling real salaries (as set forth below), judicial caseloads have exploded. The growth in civil and criminal filings in the district courts has not gone unredressed by Congress. Additional district judgeships have been authorized three times in the last 20 years, bringing the total number of authorized positions to 575 this year from the 1969 level of 340. Yet the increasing filings are such that, even with these infusions of personnel, average per-judge caseloads in the district courts are much higher now than they were in 1969. As Table 7 shows, total civil and criminal filings more than doubled since 1969, from 110,778 to 283,137 filings this year. Over this same period, average judicial caseloads increased from 339 to 520 per judge, a 53 percent increase.

An even worse pattern exists in the courts of appeals. Total appellate filings rose from 10,709 in 1969 to 38,820, which means appellate caseloads almost quadrupled in 20 years. Despite several increases in the number of authorized circuit judgeships, average caseloads grew from 123 in 1969 to 249 this year. That represents more than a 100 percent increase in 20 years.

TABLE 7

CIRCUIT AND DISTRICT COURT WORKLOAD SINCE 1969

YEAR	NUMBER OF DISTRICT JUDGES	CRIMINAL CASES	CIVIL CASES	TOTAL CASES	CASES PER JUDGE	NUMBER OF CIRCUIT JUDGES	APPEALS	APPEALS PER JUDGE
1969	327	33,585	77,193	110,778	339	87	10,709	123
1970	328	38,102	87,321	125,423	382	88	11,881	135
1971	370	41,290	93,396	134,686	364	92	13,209	144
1972	388	47,043	96,173	143,216	369	91	14,832	163
1973	384	40,367	98,560	138,927	362	93	15,853	170
1974	378	37,667	103,530	141,197	374	95	15,534	164
1975	383	41,108	117,320	158,428	414	96	17,376	181
1976	375	39,147	130,597	169,744	453	94	18,538	197
1977	373	39,786	130,567	170,353	457	87	19,001	218
1978	381	34,624	138,770	173,394	455	95	19,185	202
1979	397	31,536	154,666	186,202	469	94	21,127	225
1980	481	27,968	168,789	196,757	409	126	23,181	184
1981	472	30,413	180,576	210,989	447	125	27,101	217
1982	496	31,765	206,193	237,958	480	125	27,768	222
1983	482	34,928	241,842	276,770	574	140	31,081	222
1984	495	35,911	261,485	297,396	601	142	33,468	236
1985	496	38,546	273,670	312,216	629	147	35,952	245
1986	531	40,427	254,828	295,255	556	156	35,768	229
1987	532	42,156	238,982	281,138	528	154	36,862	239
1988	544	43,503	239,634	283,137	520	156	38,820	249

Notes: - Caseload figures are for the year ended June 30th. The number of district and circuit judges above represents the number actually on the bench as of June 30.

- Data are from the Statistical Analysis and Reports Division, Administrative Office of the United States Courts.

The burgeoning judicial workload is a major source of dissatisfaction among Federal judges. The workload burden stems both from the sheer numbers of cases filed and from their growing complexity as Federal judges are called upon to resolve many of the major legal, political and social disputes of our time. In addition, judges face the burden of observing substantial limitations on their conduct on and off the bench. In this regard, it is sufficient here merely to list other changes which, together with the imposing workload, have very substantially added to the pressures of the job of Federal judge:

- Judges are today measurably more restricted than ever in their outside activities, associations, and income-earning opportunities. Judges cannot practice law (this is a criminal offense), and the press of judicial responsibilities coupled with ethical disqualification rules generally inhibit (if they do not absolutely foreclose) most other sources of supplementary income as well. 9/ As a result,

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9/ For example, the law requires recusal should a judge possess any financial interest, however small, in a party litigant. See 28 U.S.C. § 455(b)(4). Ownership of a single share of a company's stock or of a small undivided interest in its debt obligation disqualifies the judge in any case where the company or its affiliates or divisions are a party. This is a strong deterrent to investment activities of a judge, particularly those involving publicly held companies. In addition to statutory restrictions, judges' outside activities are limited by the Code of Conduct for United States Judges. The Code of Conduct proscribes involvement in small business activities unless the business is wholly-owned by members of the judge's immediate family. The Code of Conduct also condemns "apparent improprieties"—activities which, although not specifically prohibited, are nevertheless deemed unseemly and therefore improper for a judge. This leaves open little more than teaching, writing, and lecturing, to the extent these activities can be fit in after fulfilling the heavy judicial responsibilities that rightly come ahead of any personal efforts to supplement income.

judges face the competing pressures of salaries heavily eroded by inflation and working restrictions that effectively prohibit them from supplementing their earnings with outside work.

- Their work in administering criminal trials has been dramatically increased, first by the rigid time limitations of the Speedy Trial Act and, most recently, by the meticulous analyses required by the new Sentencing Guidelines.

- Their work in administering civil cases is vastly more complex than even a decade or so ago. The ordeal of pretrial discovery, the burdens of multi-party and class action trials, the endless variety of civil rights cases, the application of dozens of new statutes relating to the environment, freedom of information, consumer protection . . . all demand more of a judge than the laws of a simpler era.

- With the increase in complexity of the judging profession, the introduction of computers, and the increase in judicial personnel, courts, circuit councils, and the Judicial Conference have had to resort to the use of committees of judges to perform much of the administrative work of the courts. It is a conservative estimate that approximately one-third of a judge's time is devoted to committee housekeeping and administrative duties — something relatively unknown to a judge of, say, the 1940's and 1950's.

- Judges must file extensive financial disclosure reports which are accessible to the public and are minutely monitored by a legislatively created judicial committee.

The Survey of Federal Judges, considered in more detail in the following section, reveals in entry after entry a Federal judge, particularly a Federal trial judge, who finds him or herself working harder and longer than as a practitioner. This, then, is an aspect of the compensation picture that ought not be brushed aside.

B. The Debilitating Effects of Inadequate Judicial Compensation

The debilitating effects of inadequate compensation on the Federal Judiciary are cause for a great deal of concern. Many individuals must make sizable financial sacrifices to accept appointment to the bench. No doubt as a consequence, Federal judges generally view their salary level as a major source of dissatisfaction with their position. In the long run, continued dissatisfaction with judicial salaries can only lead to worsening morale, an eroding commitment to Federal judicial service, and the undermining of efforts to recruit and retain the best applicants for judicial office.

1. The Federal Judges Survey

As an aid to the Quadrennial Salary Commission's deliberations, the Judicial Conference Committee on the Judicial Branch undertook to gather quantitative data on the effects of inadequate compensation of the Federal Judiciary by surveying Federal judges. We believe this to be the most thorough and professionally designed survey with the widest participation yet conducted of Federal judges. Survey questionnaires were sent to 710 active judges of the courts of appeals, district courts, and Court of International Trade. We received 638 completed questionnaires, of which 632 were usable. This 90 percent response rate is sufficient to lend an extremely high degree of confidence to the data. The results of the survey, as set forth below, depict a growing sense of dissatisfaction and frustration on the part of Federal judges that is likely over time, and in the absence of serious salary reform, to erode the quality and character of the nation's Federal courts.

The judges survey produced clear evidence of two competing themes: judges very much appreciate their work, but not their salary. Judges reported great satisfaction with the opportunity for public service and the legal and intellectual challenges they encounter in their positions. On the other hand, they expressed strongly negative feelings about their salaries. Almost two-thirds of the judges who responded listed compensation as the greatest drawback of the position of Federal judge. Similarly, more than three-quarters of the respondents disagreed or strongly disagreed with the statement that the level of financial compensation was an important advantage of the job. And when asked to assess their satisfaction with the present salary level, the average response fell between dissatisfied and very dissatisfied, as 85 percent of judges marked one of these two categories. 10/

10/ Federal Judges Survey, responses to questions 3, 4, 18.

The practical ramifications of this are self-evident. Men and women who feel they are underpaid for the demanding work they do may well suffer from poor morale and a declining sense of commitment to long-term public service. Such attitudes are especially serious in a system that contemplates and has traditionally elicited lifetime service from its judges. The views expressed by many judges reflect a passionate sense of mistreatment, insult, and unfairness: 11/

- "I am proud to be a judge, and think I have been a good one during these past 15 years. But I feel betrayed by Congress' failure to protect judges from inflation. . . . My financial reward for 15 years of public service has been an effective 40 percent pay cut."

- "The non-material rewards of being a Federal judge are overwhelming and are incapable of being duplicated in the private sector. There is, however, a feeling that you are being taken advantage of by reason of the workload and poor compensation."

- "I had no idea when I sought for and received this appointment that Federal judges were singled out for grossly unfair treatment."

11/ Federal Judges Survey, anonymous responses.

- "The disgracefully low level of compensation erodes respect for the Federal Judiciary."

- "I love my job, but I am angry about the insulting financial discrepancy, and angrier still that the nation values its judges so little . . . ."

- "I was, and remain, absolutely shocked by the disgraceful treatment we receive on pay."

- "I expect to be paid fairly. I am not."

An additional indication of judicial dissatisfaction with salaries appears in the advice judges offer to third parties. The survey asked judges what they would advise a friend or colleague who was considering seeking appointment as a Federal judge. Fully 20 percent of those who responded said they would not advise their friends or colleagues to seek such appointment. This was true even though most judges had only the highest praise for the position. Those judges who said they would encourage others to seek an appointment generally qualified their advice by noting the financial sacrifice likely to result from the low salary. The consensus view was perhaps best expressed by a judge who stated that he would not advise a friend to seek appointment as a Federal judge, "unless that person was seeking long hours and inadequate compensation." 12/

12/ Federal Judges Survey, anonymous response.

2. Judges' Financial Sacrifice

The Federal Judges Survey provides particularly useful information on the magnitude of financial sacrifice individuals experience upon appointment to the Federal bench. Although not all appointees take a pay cut when they assume judicial office, the range of financial disadvantages resulting from judicial service virtually guarantees that all appointees will suffer some economic loss. This is the primary reason for the strong expressions of dissatisfaction described above.

The most significant financial consequence for most judicial appointees is a reduction in salary upon appointment. Many judicial nominees are drawn from private practice, the business world, and academia. As set forth above, salaries for lawyers in those sectors of the profession generally exceed salaries for Federal judges. Nominees drawn from the public sector, such as from state courts and public prosecutor and defender offices, often do not experience a salary reduction, but they receive at best a minor salary increase when they assume the Federal bench.

The experience of Federal judges now on the bench confirms these points. According to the survey, earnings for judges in the year before appointment averaged \$108,054. For more recent appointees, i.e. those appointed in the last ten years, average earnings in the year before appointment were \$119,969. Many judges reported prior year's earnings of over \$200,000. Because Federal judicial salaries fall well below these figures, many judges suffer a drop in pay upon appointment. Indeed, the survey results indicate that 73 percent of judges now on the bench took a pay cut when appointed, and that the average salary reduction was \$69,708. Since the average first year's judicial salary reported by these judges was \$62,520, this means that on the average those judges who took a pay cut had their pay cut in half.

It is equally important in measuring the financial effects of judicial service to consider what judges would have earned but for their appointments to the bench. The initial reductions in salary described above are large, but they measure only a one-year loss. Judges who remain on the bench experience additional effective losses each year they continue to serve in that they forego higher earnings available in other jobs.

The survey attempted to measure these effective losses by asking judges to estimate the salary they would have earned if they had continued on their original career path rather than accepting appointment to the bench. An overwhelming majority of judges estimated that their alternative income would have exceeded that of a Federal district judge. Indeed, 40 percent projected earnings of over $200,000 annually, more than twice their present salaries. Fewer than one of ten judges estimated that they would be earning less in an alternate career than they earn as a Federal judge. Added together, the immediate and long-term salary losses add up to a major financial sacrifice for all but the very wealthy.

Many judges who responded to the Federal Judges Survey reported a variety of financial consequences affecting their personal well-being and that of their families. Between 43 and 44 percent of responding judges indicated that their standard of living and sense of financial security decreased as a result of their judicial appointments. Concrete manifestations of this were the declines in personal savings and in the ability to finance children's higher education reported by 61 to 63 percent of respondents, and the increased personal debt reported by one-third of the judges. Approximately one-third of the judges also indicated that their service as a Federal judge created an increased need for them to work part-time or for their spouse to work. And more than half of the respondents found that they had a greater need to sell assets after appointment as a judge.

In view of these figures, it is not surprising that many judges feel the need to supplement their judicial salaries with other income. This is not easy, nor is it necessarily desirable. Judges operate under severe ethical restraints that limit their ability to undertake paid professional employment, and heavy workloads make it difficult for them to devote much time to extra-judicial pursuits. A few professional pursuits are nevertheless available, including teaching, lecturing, writing, and activities involving real estate, such as farming, ranching and managing rental property. Approximately one-third of the judges responding to the survey indicated that they engaged in some of these activities. This can be expected to continue and perhaps spread if judicial salary levels persist in imposing large financial sacrifices on appointees. On the other hand, judicial salary reform could relieve some of the financial pressures that lead judges to seek outside income before those pursuits cause a damaging drain of time and energy away from the business of the courts.

3. Retention of Judges

In most employment settings, a major concern of employers is how to retain valued employees. Both private and public employers may offer to enhance compensation, office conditions, or benefits as an inducement to longer service. In the case of Federal judges, however, the freedom to offer employment enhancements as an inducement to continued service simply does not exist. If anything, judges appear to be penalized for longer service. Their salaries lose ground to inflation but compensating raises are allowed only infrequently. At the same time, workloads are spiraling ever-upward. And judges are falling farther and farther behind the pay and benefits available to their colleagues in the private sector.

Besides contributing to judicial dissatisfaction and poor morale, these disincentives to continued service will inevitably affect the retention rates for Federal judges. Evidence of this is readily available from the results of the Federal Judges Survey, from recent patterns of judicial resignations, and from the views expressed by those who have left the bench. There can be little doubt from this evidence that continued inadequate judicial compensation is likely to present a major obstacle for many judges otherwise committed to the tradition of lifetime judicial service.

This is a truly troubling development. The constitutional guarantee of life tenure has long been a hallmark of the Federal Judiciary, providing a mantle of independence and integrity to judicial decision-making while demanding in return a lifetime commitment to public service. Financial pressures that keep judges from fulfilling that commitment weaken the Judiciary as an institution. The willingness of most judges thus far to resist those pressures and remain on the bench demonstrates a deep and abiding dedication to public service. The seriousness with which some judges must now consider premature departure does not reflect any diminution in judges' sense of dedication but instead reflects the sad fact that financial pressures are becoming increasingly severe. As one judge explained, "I love this job but I love my family more." 13/

a. Survey Results

A persuasive indication that low salaries may affect the future service patterns of Federal judges comes from the opinions and actions of the judges themselves. The survey results demonstrate that judges are giving increased consideration to leaving the bench because of inadequate salaries.

13/ Federal Judges Survey, anonymous response.

For example, judges were asked how seriously they had considered cutting short their active judicial service for reasons primarily related to salary. The options listed as possibilities included resigning before reaching the minimum retirement age of 65; electing senior status sooner than the judge otherwise would have; and retiring from office under 28 U.S.C. § 371(a) to return to the practice of law rather than electing senior status and continuing to serve as a judge. More than one-half of the responding judges indicated that they had given at least some minimal thought to these possibilities. Many of these judges — up to 31 percent of those who responded — said they had "very seriously" considered taking at least one of these steps.

Of even more concern than the fact that many judges are giving serious consideration to shortened service is the fact that some have taken affirmative steps in that direction. A total of 66 judges indicated that they have taken specific actions related to early resignation or retirement. The actions range from looking for alternative employment to receiving and considering concrete job offers. Many of these judges noted that any affirmative steps to leave the bench would await the outcome of the 1988 Quadrennial Salary Commission process. Those adopting a "wait and see" attitude may well be inclined to leave the bench if the upcoming salary process leads to the same disappointing finale so often reached in the past.

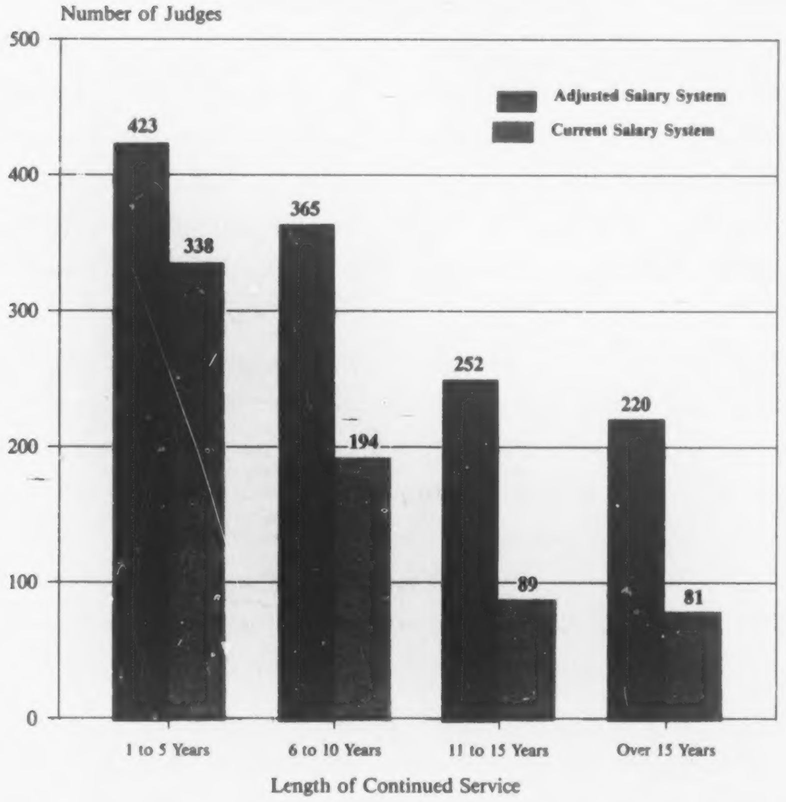
These responses also effectively rebut the notion that life tenure presents an adequate substitute for equitable salary levels. This has never been a very persuasive argument, since it is clear that the kinds of people who are appointed to the Federal bench generally do not have job security as one of their worries. Moreover, the survey confirms that many judges do not accept that trade-off. Those judges who indicated they are seriously considering leaving the bench obviously do not view life tenure as a sufficient inducement to stay, since by their act of leaving they forfeit its benefits. While life tenure is undeniably an attractive feature of Federal judgeships, its principal value derives from its role in preserving judicial independence and not from its questionable value as a substitute for fair pay.

The survey also collected information on the length of time judges expect to stay on the bench. In order to isolate the effect of low salaries on this issue, judges were asked to estimate how long they were likely to continue serving under the current pattern of salary increases and under a more equitable system in which salaries would be adjusted to catch up with past and future inflation. The responses are compared in Chart A. This establishes that many more judges would be very likely to stay in office if their salaries were adequately protected from the effects of inflation. The relative willingness of judges to continue serving under an adjusted inflation-resistant salary system is more pronounced the longer the anticipated service. That is, approximately three-quarters of the judges who would stay one to five years under an adjusted system would also stay under the current system. But only one-half of the judges who would stay six to ten years under an adjusted system would stay that long under the current system, and only one-third as many would stay 11 years or more under the current system. Viewed from another angle, Chart A shows that more judges are likely to continue serving any length of time under an inflation-resistant salary system than are likely to stay as little as six years under the current system.

The survey also elicited the converse of this information, as it asked judges to indicate whether they were very unlikely to continue serving for particular time periods. Very few expressed this view, but the pattern of responses mirrored those of judges who expected to stay in office. As shown in Chart B, a greater proportion of judges expressed an unwillingness to continue service well into the future under the

CHART A

NUMBER OF JUDGES VERY *LIKELY* TO CONTINUE SERVING



Note: — Data reflect the number of judges who reported they were very likely to continue serving for the time periods indicated: (1) assuming that the current pattern of increases in salaries for Federal judges continues; and (2) if instead of the current pattern of salary increases a Federal judge's salary is routinely adjusted to catch up with past and future inflation.

current salary system than under an improved system that would protect salaries against inflation losses.

Of course, the current personal belief that a judge is very unlikely to remain in office for the next decade will not necessarily lead to a resignation in ten years. But it is reasonable to assume that many of those who find lengthy continued service very unlikely will in fact choose not to stay on the bench. Comments volunteered by a number of judges in response to the Federal Judges Survey confirm this point:

- "If the only way that I can meet my obligations to educate my four children is to leave the bench, then I will quit."

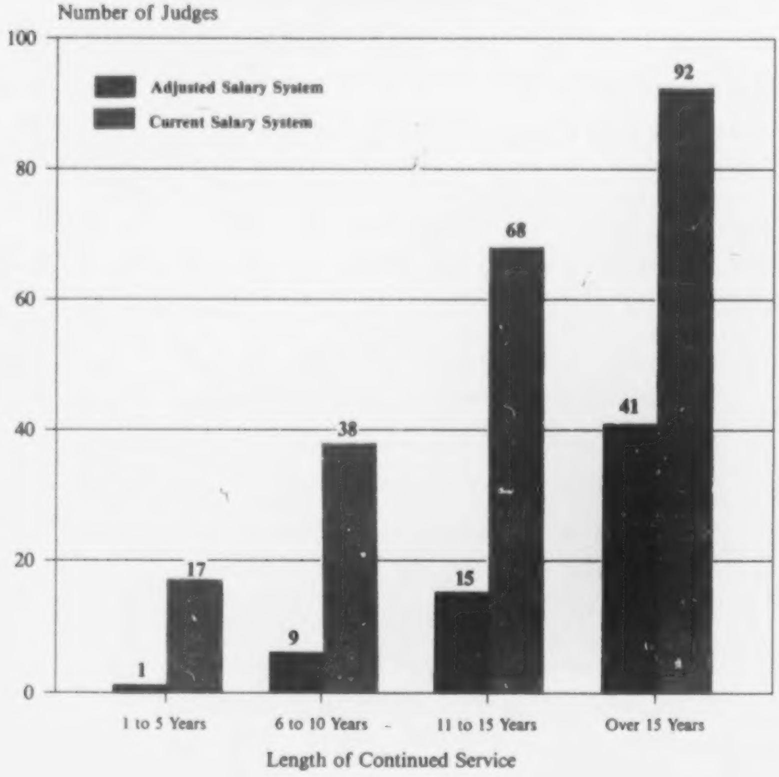
- "I am 54 and must decide soon [whether to return to private practice]. I have tentative offers from $450,000 up. The long term financial sacrifice for my family is too much. I cannot sentence them to a lifetime of genteel poverty."

- "It had been my initial intent to take senior status; however, because of the present low salary I plan to resign and return to private practice where I am confident I can earn well over twice the present judge's salary working part time."

- "Love for the art of judging kept me at it, but . . . [causing] me to abandon my original and continued intent

CHART B

NUMBER OF JUDGES VERY *UNLIKELY* TO CONTINUE SERVING



Note: — Data reflect the number of judges who reported they were very unlikely to continue serving for the time periods indicated: (1) assuming that the current pattern of increases in salaries for Federal judges continues; and (2) if instead of the current pattern of salary increases a Federal judge's salary is routinely adjusted to catch up with past and future inflation.

to serve for life . . . [is the] realization that I cannot leave anything to my family but a limited life insurance benefit."

- "Continued service past the age of retirement would be fiscally irresponsible."

These statements raise the spectre of a time bomb in the Federal Judiciary that, in the absence of serious salary reform, could precipitate a major — and unprecedented — exodus from the bench in the next decade.

b. Recent Judicial Departures

It is difficult to pinpoint the reasons why judges resign their office. There are probably as many reasons why a judge might leave the bench as there are judges. In addition, any individual decision to resign will undoubtedly involve a host of inter-related considerations. However, two sources of information are available that confirm the apparent connection between inadequate salary increases and judicial departures.

The first source of information is the data on the patterns of judicial resignations over the last two decades. Table 8 records the number of judicial departures from courts of appeals and district courts by year from 1958 to the present. At the beginning of this period, resignations were quite rare; none occurred from 1958 to 1960, from 1964 to 1966, and in several other individual years, while only two occurred in 1970 and one in 1973. In more recent years resignations have increased in number (although they are still by no means frequent). Three judges left the bench every year from 1980 to 1983, and since 1984 between four and seven Federal judges resigned each year.

TABLE 8

CIRCUIT AND DISTRICT JUDGE DEPARTURES BY YEAR

Year	Number of Resignations	Year	Number of Resignations
1958	0	1974	7
1959	0	1975	2
1960	0	1976	3
1961	1	1977	1
1962	0	1978	4
1963	1	1979	2
1964	0	1980	3
1965	0	1981	3
1966	0	1982	3
1967	1	1983	3
1968	0	1984	7
1969	0	1985	5
1970	2	1986	4
1971	0	1987	7
1972	0	1988	5
1973	1		

Notes:

- Departures include resignations before retirement as well as retirements from office under 28 U.S.C. § 371(a). Judges who retire under 28 U.S.C. § 371(b) by electing senior status are not included in these figures.

- Figure for 1988 is estimated for the entire year based on three resignations as of August 1988.

These figures reflect an increasing rate of departures that has grown in tandem with the decreasing real salary levels of the last two decades. During this same period the number of judges has also risen, as Table 7 (on page 17) shows. The number of district judges increased by 67 percent, from 327 to 545, while the number of circuit judges increased by 82 percent, from 87 to 158. Yet the rate of increase in judicial departures clearly surpasses these rates. On the average, fewer than one judge a year resigned in the early 1970's compared to an average of five to six each year in the late 1980's. It is certainly plausible to conclude that declining real judicial salaries have contributed to a higher incidence of judicial departures in recent years.

Statements made by individual judges who recently resigned provide a second source of information corroborating this conclusion. The Judicial Conference Committee on the Judicial Branch has conducted a series of exit inquiries relating to 26 judges who resigned in the last ten years. The information obtained, which is summarized in Table 9, paints a sobering picture. Almost all of the judges indicated that financial considerations were a factor in their decision to leave the bench. For many, financial pressures played a decisive role. Several judges commented to the effect that "if money had not been a problem, I would still be there." In contrast, only three judges reported that finances were not a factor in their decision to leave.

The majority of recent resignees left the bench to take positions in private firm practice or corporate law departments. As expected, many noted that their current incomes were substantially greater — even several multiples greater — than in the Judiciary. Yet despite the attraction of higher salaries, those who resigned appear not to have reached the decision easily. Most of the judges expressed sadness and regret that financial and other pressures led them to give up a position they respected and enjoyed. For at least one judge, the financial pressures were more difficult to resist because of a loss of hope stemming from his belief that "there was no expectation that the problem

TABLE 9

SUMMARY OF EXIT INQUIRIES

	Subsequent employment in:			Stated Reason for Leaving:	
	Private or Corporate Practice	Executive Branch	State Court	Finances a Factor	Finances Not a Factor
1	X			X	
2	X				X
3	X			X	
4		X			
5		X			
6	X			X	
7				X	
8	X			X	
9	X			X	
10	X			X	
11				X	
12			X		X
13	X			X	
14			X		
15				X	
16				X	
17	X			X	
18					X
19	X			X	
20	X			X	
21	X			X	
22	X			X	
23	X			X	
24	X			X	
25	X			X	
26	X			X	

would be corrected by Congress." 14/ The current Quadrennial Salary Commission process offers the opportunity to revise that view and to assist judges like these in resisting otherwise seemingly intolerable financial pressures.

4. Recruitment

Inadequate judicial compensation affects those who may be considering a judicial appointment as well as those who have already accepted one. There is every reason to believe that the position of Federal judge has become less attractive to prospective appointees because of low judicial salaries. Qualified attorneys with financial obligations to themselves and their families who do not have the independent wherewithal to meet their obligations are most likely to be deterred by the spectre of low and declining real salaries. Without the realistic expectation of substantial and certain salary adjustments, these individuals may simply fail to seek, or even affirmatively decline, appointment to the bench.

a. Survey Results

Because prospective judicial nominees do not comprise a readily identifiable group, we were unable to collect information from them. Instead, the Federal Judges Survey asked incumbent judges for their views, on the assumption that the pool of existing appointees closely resembles the pool of prospective appointees. The survey sought to measure the appeal of a judicial appointment to those hypothetically considering the job anew. As in the area of judicial retention, the survey attempted to isolate the effect of inadequate compensation on recruitment of judges. Respondents

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14/ Statement in Exit Interview.

were asked to indicate how interested they would be in seeking judicial appointment under the current salary system or under a more equitable one that routinely adjusted compensation to catch up with past and future inflation.

If they had it to do over again, most judges said they would be interested in seeking an appointment as a Federal judge. The extent of their interest differed markedly, however, depending on the salary system under consideration. Chart C records the responses. While 459 judges (or 73 percent of those who responded) said they would be extremely interested in appointment under an adjusted inflation-resistant system, only 150 (or 24 percent) would be extremely interested in appointment under the current system. At the opposite end of the scale, 55 judges (nine percent) said they would not be interested at all in reappointment under the current salary system, while only three (less than half of one percent) were completely uninterested under an adjusted system. The inescapable conclusion is that many qualified men and women will turn down Federal judicial appointments unless salaries are raised. Indeed, one respondent noted that he could currently afford to be a Federal judge but that he "turned it down while married with school age children." 15/

Other information from the survey buttresses the conclusion that inadequate salaries are likely to discourage potential judicial nominees from seeking appointment. First, the survey asked incumbent judges to compare the salaries of potential candidates for Federal judgeships to the salary level of Federal judges. On the average respondents estimated that 78 percent of the potential judicial candidates they knew would find a judge's salary to be a decrease from their current salary. Only nine percent of candidates were expected to experience a salary increase upon appointment as a Federal

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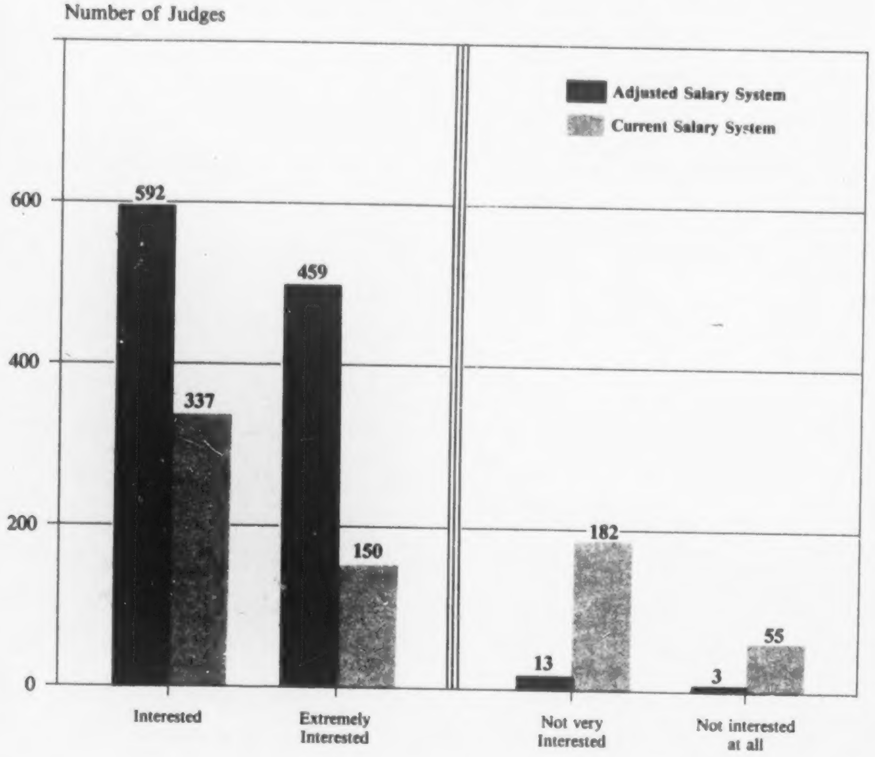
15/ Federal Judges Survey, anonymous response.

CHART C

INTEREST IN SEEKING A JUDICIAL APPOINTMENT



Note: — Data reflect the number of judges who would be interested in seeking appointment as a Federal judge if they had it to do over again: (1) at the current level of compensation and with the current pattern of salary increases; and (2) if the level of compensation were routinely adjusted to catch up with past and future inflation.

judge. These figures match closely the actual experience of judges now on the bench, and so are quite plausible.

Second, when asked what they would advise a friend or colleague considering seeking a nomination, 20 percent of judges indicated they would advise against it, primarily for salary reasons. More than half of the judges mentioned compensation in their responses, mostly to the effect that prospective nominees should be fully aware of the inadequate compensation before making a lifetime commitment to the office. One judge stated that he would advise a friend to seek a judgeship "if he had no children he had to educate, was willing to live very frugally, and had some private resources. In other words, this excludes most normal, successful lawyers." 16/

b. Judicial Search Efforts

A growing perception among those involved in the search for judicial candidates is that judicial salaries have made recruitment more difficult. To some candidates, low salaries reflect the perception that a Federal judgeship is becoming a "second-rate" job. 17/ To others, the financial sacrifice of public service has simply grown too great, particularly in comparison with the stratospheric compensation earned by experienced private practitioners.

While few lawyers announce publicly their disinclination to make such a sacrifice, some do so in private conversation. One judge reported, "I have been told by a small number of persons I approached regarding a judgeship that all of them (speaking to me

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16/ Federal Judges Survey, anonymous response.

17/ Federal Judges Survey, anonymous response.

alone) were unwilling to leave their lucrative practices for a judgeship." 18/ Other judges repeated his experience.

Recruitment difficulties are also apparent from the actions (or, more precisely, inactions) of prospective judicial candidates. Retired Chief Justice Burger testified in a recent hearing that in one district "ten persons were offered a judicial appointment before the eleventh person finally accepted." 19/ Screening committees for the American Bar Association and for United States Senators involved in the nominating process reportedly have encountered similar resistance. For example, a member of the First Circuit Nominating Committee recently reported that judicial salary levels were a "substantial negative" in the recruitment process:

> It comes as a shock to a well-respected, successful trial lawyer when called to focus on the actual salary. . . . A lawyer who has children to educate frequently finds that the salary available to him after all the deductions is less than junior associates working with him. For a potential candidate balancing the options of the rigors of the selection process, the likelihood of success and the potential negative results, the salary factor becomes determinative and no amount of persuasion is successful. . . . [This] excludes [from the recruitment process] the large numbers of private practitioners who

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18/ Federal Judges Survey, anonymous response.

19/ The Washington Post, Feb. 3, 1987, at A4.

> bring [to the bench] both a different perspective and a substantially broader frame of reference. 20/

Similarly, former Government officials involved in the President's judicial selection process have reported increasing recruitment difficulties in the last few years:

> Time and time again, I and others at the Department of Justice were told by lawyers who were highly qualified to be Federal judges that they simply could not afford to leave the practice of law for a Federal judicial post. Beyond those lawyers who were contacted by the Department of Justice, we were keenly aware of many more outstanding lawyers who would not even let their names be put forward for consideration. If the present state of affairs continues, those involved in the Federal judicial selection process will have for consideration only the wealthy or those individuals for whom a Federal judgeship will constitute a step up the financial ladder. 21/

5. The Costs of Premature Judicial Departures

Premature judicial departures impose a number of intangible costs on the Federal Judiciary as an institution, including undercutting the principle of life tenure and the

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20/ Letter from Richard K. Donahue to Kenneth R. Feinberg, July 28, 1988.

21/ Letter from Edward C. Schmults to the Honorable Frank M. Coffin, June 22, 1984. Additional comments from other participants in the judicial nomination process are reported in Promises Made, Promises Still Unkept, at 45-48 (accompanying this submission).

independence and public respect it engenders. These costs, though real and corrosive, are difficult to quantify. In contrast, the tangible losses the Judiciary experiences when judges feel compelled to resign their positions for financial reasons may be easily quantified.

When an experienced Federal judge leaves the bench, the Judiciary loses valuable services and skills that are not quickly — or easily — replaced. For example, the 51 judicial positions that were filled in the year ending June 30, 1988, were vacant an average of 467 days each, or over 15 months. As of August 1, 1988, there were a total of 36 vacant judgeships, ten of which qualified as judicial emergencies in that they had been vacant for 18 months or more. 22/ For every judge who leaves, the Judiciary can anticipate vacancies of like duration.

A second loss of judicial services occurs during the time it takes judges to get "up to speed" in their new positions. New appointees rarely join the bench with the depths of judicial insight, capabilities, and practical experience that years of service confer. The Government bears the cost of educating and training new judges to assist them in assuming their duties. But Retired Chief Justice Burger estimated that "it takes five years for a qualified attorney to reach peak efficiency as a Federal judge." 23/ The combination of lost experience, delayed replacement, and a steep "learning curve" adds up to an expensive transition.

22/ Statistical Analysis and Reports Division, Administrative Office of the United States Courts.

23/ Retired Chief Justice Burger, quoted in Corporate Committee for Fair Compensation of the Federal Judiciary, Federal Judicial Salaries: A Gamble with the Future.

Finally, when senior judges depart, the Government experiences a double loss. We lose services that are not replaceable — since resignation of a senior judge does not create a vacancy — and we lose services that are otherwise provided at virtually no cost. Judges who leave the bench before reaching age 65 or with fewer than 15 years of service lose any retirement benefits and forfeit their right to an undiminished salary for life. Once individuals meet those age and service requirements, however, they may retire and continue to receive a salary under 28 U.S.C. § 371. Most judges eligible for retirement elect to take senior status, which means they continue to hold judicial office, many of them with full-time workloads. In effect, these judges work for nothing, since they are entitled to the full salary of the office whether or not they remain in service. Financial pressures that force senior judges to relinquish office, or that discourage judges from electing senior status retirement in the first place, are thus especially costly to the Government because the Judiciary loses the benefit of virtually free services provided by the most experienced Federal judges.

IV. The Inadequacy of Federal Judicial Salaries

No matter how one views them, the salaries paid to Federal judges are inadequate. They have declined substantially in real terms over the past 20 years. Despite a modest raise last year, real salaries are still well below the 1969 benchmark level, and real after-tax salary levels remain even lower. The effective decline in judicial salaries stands in marked contrast to the experience of most other United States workers, whose salaries over the last two decades in some instances rose well above inflation and in most instances showed at worst small losses. This decline also runs counter to the rising tide of costs for consumer goods and services and major consumer purchases.

Other jurisdictions do a much better job of compensating their judges than does the Federal Government. Canada and Great Britain, many state courts, and even private "rent-a-judge" services pay their judges more — often much more — as do private legal employers, who presumably recognize the important role adequate compensation plays in attracting and retaining the best legal talent. Those Federal judges who remain on the bench must grapple with less disposable income, higher costs, greener pastures (that is, better pay) in other jurisdictions and professions, and caseloads growing both in size and complexity. In short, they are paid less and less to do more and more. Given this situation, it is, as one judge remarked, hard to understand "how a younger person in a one income family with no independent income or assets can afford to be a Federal judge." 24/

A. The Fall in Judicial Salaries

1. Real and After-Tax Losses

As noted above, judicial salaries in real terms have fallen substantially since the benchmark level set in 1969. None of the salary adjustments during the last 20 years has done more than temporarily arrest this downward trend. During periods of high inflation in the 1970's, judicial salaries suffered the steepest real declines, but they have continued a steady downward momentum even in recent years while inflation has been easing substantially.

Charts D and E illustrate the historical pattern of real salary losses for judges at all levels of the Federal Judiciary. The Chief Justice and Associate Justices of the Supreme Court have experienced the largest real losses, as their salaries (expressed in 1969 dollars) declined 43 percent between 1969 and 1988. During this same period, circuit and district judge salaries gradually lost 30 percent of their value. Although there is

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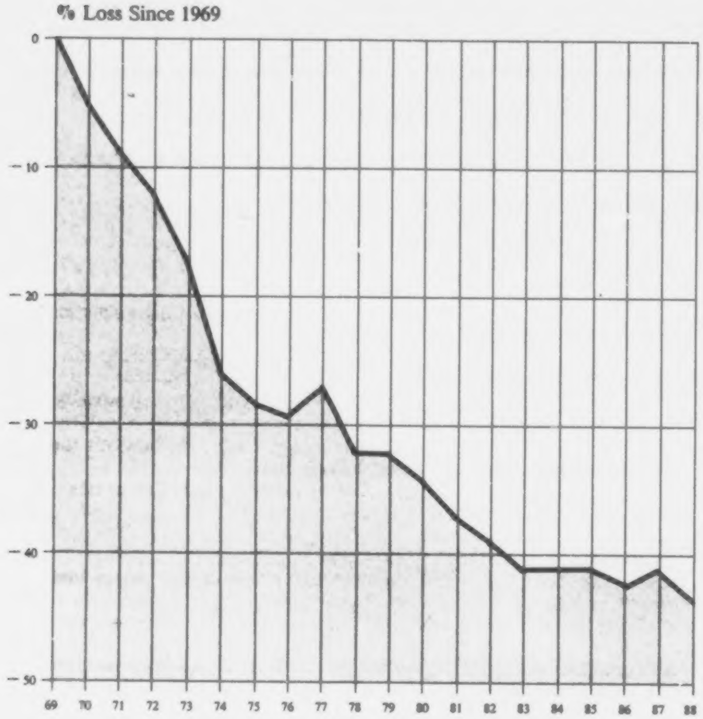
24/ Federal Judges Survey, anonymous response.

CHART D

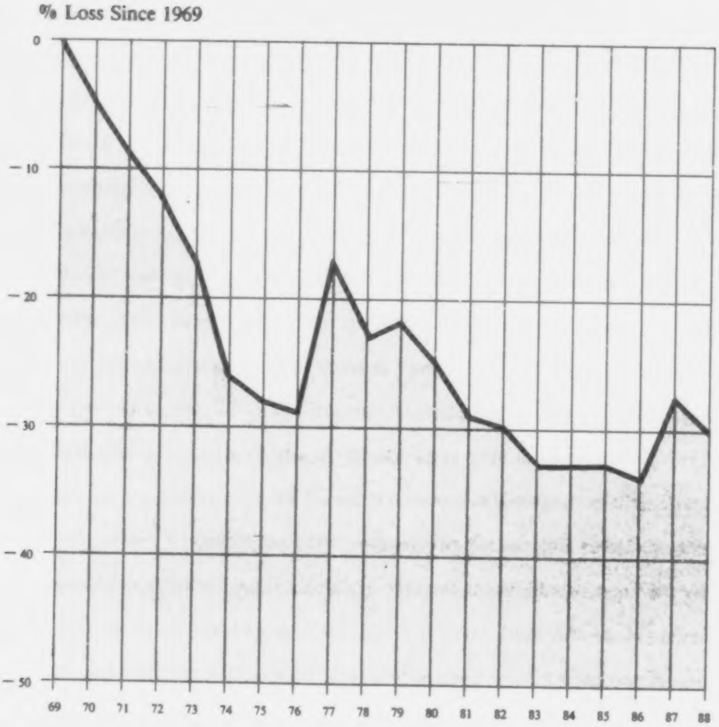
SUPREME COURT JUSTICES' REAL SALARY LOSSES



Note: — Percentage losses in real salary for the Chief Justice and Associate Justices were identical in every year but 1979, when the Chief Justice's salary loss was one percentage point lower than that for Associate Justices (shown on graph).

CHART E

CIRCUIT AND DISTRICT JUDGES' REAL SALARY LOSSES



Note: — Percentage losses in real salary for circuit and district judges were identical in most years. In 1977 through 1980 and in 1982, circuit judges' salary loss was one percentage point lower than that for district judges (shown on graph).

some variation in dollars and percentages, these charts graphically demonstrate one consistent point: the salaries for all Federal judges are effectively much lower now than they were 20 years ago.

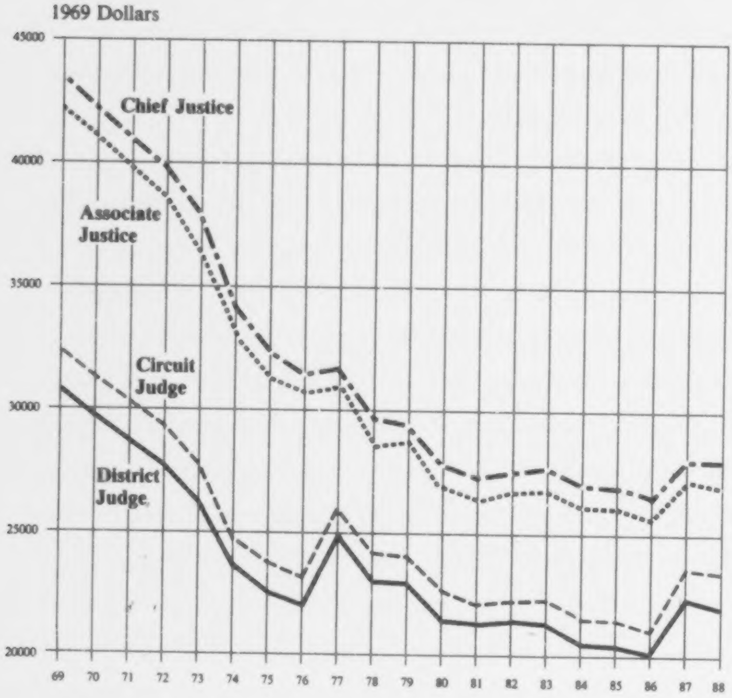
Federal taxes further reduce the real value of judicial salaries. This is not surprising, since almost all citizens find their after-tax income to be lower than their gross income. It is nevertheless instructive to consider how large an effect this has on Federal judges. Their after-tax income (expressed in 1969 dollars) has fallen steadily over the past 20 years, despite major revisions in the tax laws during this period. Tax reforms in 1981 and 1986 reduced the marginal rates on earned income and lowered the overall tax liability for many Americans. 25/ Yet these ultimate tax savings did not alter the long-term financial position of Federal judges. The average after-tax salary of a district judge in 1969 was estimated to be $30,646. Adjusted for inflation, the after-tax salary in every year since then is lower than the 1969 level. By 1988, even with the benefits of a 1986 salary increase and tax reform, the after-tax salary for district judges, expressed in 1969 dollars, had dropped to an estimated $22,042, a 28 percent decline.

The pattern of declining after-tax income is shown in Chart F. Salary levels moved basically in tandem and downward for all Federal judges, as the graph lines illustrate. Because this chart reflects the combined effects of inflation and taxation, it provides the most precise measurement of the total loss in income Federal judges have experienced in the two decades since 1969. During that period, after-tax judicial salaries, expressed in 1969 dollars, fell to $28,085 for the Chief Justice, $23,346 for circuit judges, and $22,042 for district judges.

25/ See Tax Reform Act of 1986, Pub. L. No. 99-514, § 101, 100 Stat. 2096 (1986); Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 101, 95 Stat. 176 (1981).

CHART F

AFTER TAX INCOME IN 1969 DOLLARS FOR SUPREME COURT JUSTICES, CIRCUIT AND DISTRICT JUDGES



Notes:
- Salary is as of the end of the year.
- Federal tax is estimated based on four personal exemptions and itemized deductions equal to 15 percent of salary. Tax after 1983 includes the Social Security tax first imposed on Federal judges in 1984.
- Value of the dollar is based on the Consumer Price Index, estimated to average 118.0 in 1988.

2. Judicial Salaries Compared to Other Workers

Of course, inflation and taxes do not distinguish between Federal judges and other workers: all are subject to their effects. But for the last two decades, salaries for other workers retained their real value to a much greater extent than did salaries for Federal judges. This is true of salaries for the general American workforce and for other Federal employees, both civilian and military.

Chart G illustrates the differences in salary treatment between Federal judges and other workers. For example, while the salary of a district judge increased 124 percent between 1969 and the present, average hourly earnings for private nonagricultural workers increased 195 percent. Hourly earnings in the finance and services industry increased even more, by approximately 198 percent and 225 percent, respectively.26/ In the Government workforce, civilian General Schedule (GS) employees averaged increases of 133 percent, while high-ranking Federal executives, including those in the Senior Executive Service (SES), averaged a 158 percent salary improvement over inflation. 27/ Military personnel saw their salary levels rise 222 percent, matching exactly the increase in the Consumer Price Index (CPI) during this period.

Of the large employment groups represented on Chart G, salaries for military personnel increased the most — and came closest to matching increases in the cost-of-living — while salaries for Federal judges increased the least. In light of this disparity, it is fair to question why judges and other high-ranking Government officials cannot at least get the same annual cost-of-living adjustments as other Federal workers. Allowing

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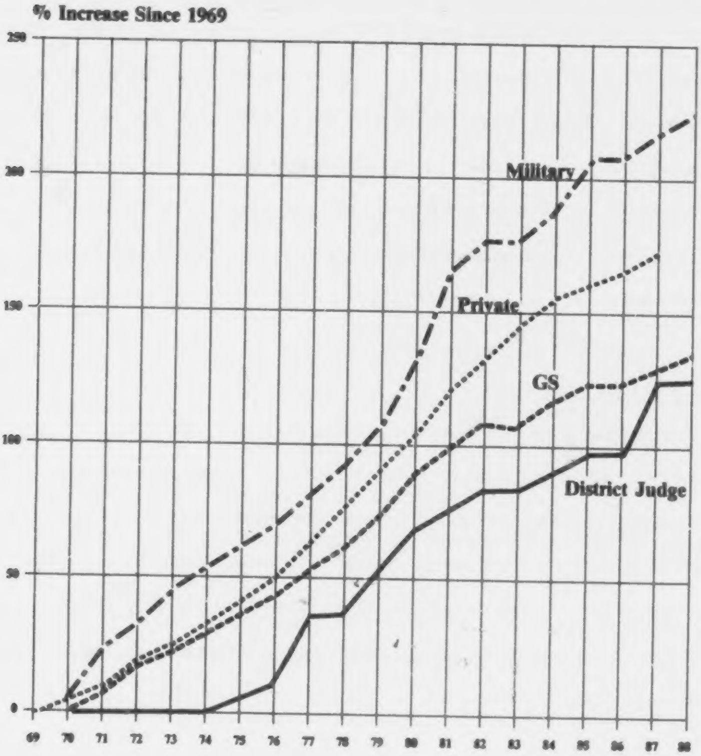
26/ U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings (June 1988).

27/ Report of the President's Commission on Compensation of Career Federal Executives at 29 (Feb. 26, 1988).

CHART G

PERCENT INCREASE IN PAY FOR MILITARY, CIVILIAN (GS) EMPLOYEES, PRIVATE WORKERS, AND DISTRICT JUDGES



Note: — Data are from the Department of Defense (military data); the Bureau of Labor Statistics Employment and Earnings (June 1988) (private nonagricultural workers data); the Office of Personnel Management (GS data).

those adjustments would go far to reverse the gradual decline in judicial salaries and restore them to their historic 1969 benchmark levels.

Certain small professional groups did even better than military workers and the average private workforce in maintaining real income levels in recent inflationary times. Chart H illustrates the magnitude of real salary increases for various professional groups between 1969 and the present. Chief accountants, high-ranking attorneys, and senior engineers all received salary increases above the cost-of-living, producing real income gains between 17 and 32 percent. This compares to the real salary losses Federal judges experienced of between 30 and 43 percent. The hard truth remains that, in contrast to most other professional workers and most of the private and military workforce, salaries for Federal judges are slipping farther and farther behind.

B. The Rise in Consumer Costs

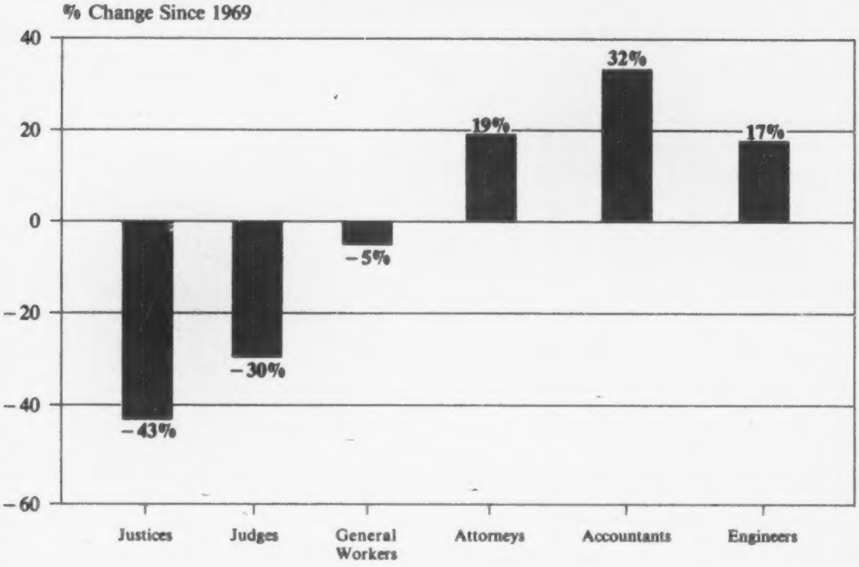
The counterpart to falling real judicial salaries is rising costs for consumer goods and services. Inflationary patterns over the past 20 years have caused prices to rise steadily and steeply. Average prices for consumer purchases have risen at a rate faster than judicial salary increases, and prices for major items such as housing, education, and medical services have exceeded even those levels. Chart I graphically depicts the twin horns of this financial dilemma: rising costs as they compare to the falling purchasing power of Federal judges.

1. The Cost of Living

Like all Americans, Federal judges face certain financial obligations to themselves and their families. Escalating costs for essential goods and services hit hardest those, like Federal judges, whose purchasing power has dwindled as salaries failed to keep pace with inflation. The best known indicator of the cost of living, the

CHART H

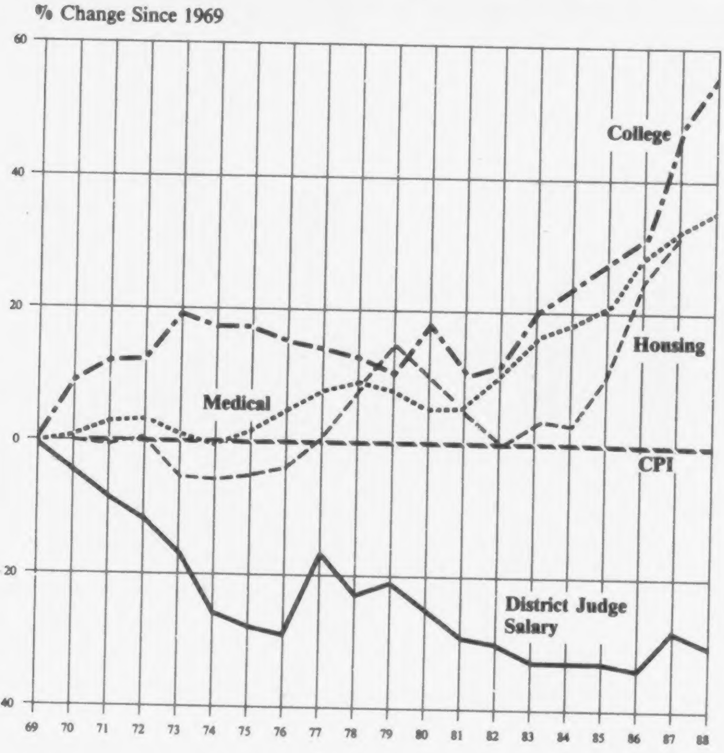
CHANGE IN REAL PAY FOR SUPREME COURT JUSTICES, CIRCUIT AND DISTRICT JUDGES, THE GENERAL WORKFORCE, ATTORNEYS, ACCOUNTANTS, AND ENGINEERS



Notes:
- Inflation is measured by the Consumer Price Index, estimated to average 118.0 in 1988.
- General workforce figures are for hourly earnings of production or nonsupervisory workers on private nonagricultural payrolls. Figures for 1988 are estimates. Bureau of Labor Statistics data.
- Data for professionals are from the Bureau of Labor Statistics' National Survey of Professional, Administrative, Technical, and Clerical Pay. The responsibility levels shown for attorneys (VI), chief accountants (IV) and engineers (VIII) are the highest measured by the survey and are most comparable to Federal judges in terms of work complexity, demands, independence, and authority.

CHART I

CHANGE IN THE REAL COSTS OF COLLEGE, MEDICAL SERVICES, HOUSING, AND THE COST OF LIVING



Note: — Data are from the College Entrance Examination Board (average total costs of private college for resident students); Consumer Price Index (medical costs component); Federal Home Loan Bank Board (average single family house price nationwide); Department of Labor (Consumer Price Index).

Department of Labor's Consumer Price Index (CPI), measures increasing consumer costs. From 1969 to 1988, the CPI measured increases of an estimated 222 percent. Simply put, this means that purchases costing $100 in 1969 would now sell for $322.

While consumer prices rose more than 200 percent in the past two decades, the salary of a district judge increased only 124 percent. This means that living costs now take a much larger share of judicial salaries than they did in 1969. In dollar terms, the salary of a district judge would have to be raised to $128,600 in 1988 to equal the purchasing power of the 1969 benchmark salary of $40,000. Instead, their salary is set at $89,500. In 1969 dollars this is the equivalent of a salary of $27,800.

Table 10 sets forth the 1969 and 1988 salary levels for a range of senior Government officials. It shows the value of these salaries in 1969 and current dollars and the percentage decline in purchasing power that these dollar amounts represent. For Federal judges, the effects of inflation combined with infrequent and inadequate cost-of-living adjustments have resulted in a 30 to 43 percent loss in purchasing power over the past 20 years.

National indicators like the CPI do not separately reflect the cost of living in more expensive urban communities. Living costs vary widely across the country, and they tend to be highest in the larger cities on the two coasts. For example, New York City has the highest housing and energy costs anywhere in the nation, and its state and city income taxes are among the highest. 28/ Federal workers in New York thus must allocate a higher proportion of their salaries to housing, food, and other necessities than is true for workers in smaller cities or other regions. Several judges noted in response to

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28/ New York Federal Executive Board, New York's "Not-So-Quiet" Federal Employment Crisis at 7-8 (April 1988).

TABLE 10

DECLINE IN PURCHASING POWER SINCE 1969

	1969 Salary		1988 Salary		
	(1969 $)	(1988 $)	(1969 $)	(1988 $)	% Decline
EXECUTIVE BRANCH					
Vice President	$62,500	$200,954	$35,767	$115,000	-43%
Executive Level I	$60,000	$192,916	$30,946	$99,500	-48%
Executive Level II	$42,500	$136,649	$27,836	$89,500	-35%
Executive Level III	$40,000	$128,610	$25,659	$82,500	-36%
Executive Level IV	$38,000	$122,180	$24,104	$77,500	-37%
Executive Level V	$36,000	$115,749	$22,549	$72,500	-37%
LEGISLATIVE BRANCH					
Speaker of the House	$62,500	$200,954	$35,767	$115,000	-43%
Majority and Minority Leaders	$49,500	$159,155	$30,946	$99,500	-37%
Senators and Representatives	$42,500	$136,649	$27,836	$89,500	-35%
Comptroller General	$42,500	$136,649	$27,836	$89,500	-35%
JUDICIAL BRANCH					
Chief Justice	$62,500	$200,954	$35,767	$115,000	-43%
Associate Justices	$60,000	$192,916	$34,212	$110,000	-43%
Judges-U.S. Courts of Appeals	$42,500	$136,649	$29,547	$95,000	-30%
Judges-U.S. District Courts	$40,000	$128,610	$27,836	$89,500	-30%

Note: - Consumer Price Index estimated to average 118.0 in 1988.

the Federal Judges Survey that the uniform judicial salary that may allow an adequate standard of living in some areas is squeezed particularly tight in New York or San Francisco. Appointment to the bench in these high-cost areas exacts a special financial sacrifice.

2. Housing Costs

The most expensive purchase most consumers make is the purchase of a home for their families. As Table 11 indicates, the cost of housing has escalated over the past two decades, rising at a rate that exceeds even the rise in the CPI. That escalation particularly affects consumers on a salary that is fixed or declining in real terms, as salaries for Federal judges have been.

Individuals considering buying a home currently face purchase prices that, on the average, have quadrupled over the past 20 years. The national average purchase price for a single-family home in 1969, $29,900, climbed to $121,800 by 1987. The pattern for large cities is similar, except that the actual prices are even higher. In the Washington, D. C., metropolitan area, for example, average new home prices rose from $46,000 to $159,500 over the last 15 years. Another way of looking at this trend is to observe that Federal district judges were paid $40,000 in 1969 when the average house cost $29,900, about 25 percent less than their annual salary. In contrast, in 1987, they were paid $89,500 when the average house cost $121,800, which is about 36 percent more than their annual salary.

Of course, most consumers do not buy a new home every year. Those who do not are able to avoid the substantial increases in purchase prices. But they cannot avoid any associated increases in property taxes and assessments, for example. Nor are they spared the growing share of income that housing costs absorb when real income declines. In any event, it is at best a small comfort to suffer smaller losses simply by

TABLE 11

AVERAGE SINGLE FAMILY HOUSE PRICES

Year	Washington, D.C.	National
1969	N/A	$29,900
1970	N/A	$31,500
1971	N/A	$32,800
1972	N/A	$34,300
1973	$46,000	$33,700
1974	$49,500	$37,600
1975	$59,000	$41,200
1976	$61,900	$44,300
1977	$69,000	$49,600
1978	$79,700	$57,100
1979	$92,500	$67,700
1980	$100,100	$73,400
1981	$112,300	$76,300
1982	$126,400	$78,400
1983	$130,000	$83,100
1984	$131,700	$86,600
1985	$152,600	$96,100
1986	$156,600	$110,600
1987	$159,500	$121,800

Note: - Washington, D.C. prices are for houses in the Washington Standard Metropolitan Statistical Area. Data are from the Office of Policy and Economic Research, Federal Home Loan Bank Board. Data from 1969 to 1972 differ slightly from later data.

virtue of being unable to afford larger ones. And it is no comfort at all to feel insistent pressures to purchase a home — family requirements, the desire to relocate near the workplace, and other financial or personal needs — but to have only a diminishing ability to respond.

3. College Tuition and Expenses

Like the cost of housing, the average cost to send a child to college has grown dramatically in the last 20 years. Also like housing costs, education costs increased during this period at a rate much higher than the CPI. Table 12 presents the average cost of a college education at public and private universities as well as Ivy League schools. As that table indicates, from 1970 to 1988 costs at private universities more than quadrupled, growing from $2,973 to $12,924. At the same time, costs at public universities more than tripled.

The average age of Federal judges at appointment has for years hovered around age 50. 29/ This is an age at which many parents have children of college age and thus encounter the largest tuition-related financial strains. At this juncture in their lives, accepting an appointment as a Federal judge, or remaining on the bench once appointed, may be especially difficult. It is, of course, more difficult with more children. As one judge remarked, "as a father of four children, I found it near impossible to afford reasonable education for all of them." Another pointed out that the cost of his children's education this year exceeded his wife's total annual salary of $23,000. 30/

29/ *See* Goldman, "The Age of Judges: Reagan's Second-Term Appointees," *ABA Journal*, Oct 1, 1987, at 94.

30/ Federal Judges Survey, anonymous responses.

TABLE 12

AVERAGE TOTAL COSTS OF COLLEGE

	Public Universities	Private Universities	Ivy League
1970	$1,782	$2,973	$4,281
1971-72	1,874	3,170	4,723
1972-73	1,984	3,279	5,043
1973-74	2,242	3,693	5,303
1974-75	2,400	4,039	5,688
1975-76	2,679	4,391	6,377
1976-77	2,790	4,568	7,171
1977-78	2,906	4,811	7,471
1978-79	3,054	5,110	8,051
1979-80	3,258	5,526	8,724
1980-81	3,873	6,885	9,790
1981-82	3,873	6,885	11,245
1982-83	4,388	7,475	12,770
1983-84	4,721	8,440	14,207
1984-85	4,881	9,022	15,272
1985-86	5,339	9,594	16,207
1986-87	5,604	10,199	N/A
1987-88	5,789	11,982	N/A
1988-89	5,823	12,924	N/A

Notes:
- Costs are for tuition, fees, room and board, books, transportation, and other expenses for resident students at four-year colleges. The tuition charge for in-state students is used as the cost of tuition for public universities.
- Data are from The College Cost Book, College Entrance Examination Board Publications.

Educational expenses are not in any sense legal parental obligations, but parents who themselves have completed college and law school preparatory to entering a legal career are often personally committed to providing their children an equal opportunity. Following through on that commitment has never been easy on a judge's salary. For Federal judges today, assisting their children through college imposes a tremendous hardship. Sending them to graduate school — helping them to pursue the same career paths the judges themselves have chosen — may simply be out of reach.

4. Medical Expenses

Medical and dental services and health insurance coverage comprise another major area of consumer spending. Costs for these services increased substantially over the past 20 years, and the rate of their increase far exceeded the rate of increase for other consumer goods and services measured by the CPI. By 1987, medical costs were 308 percent higher than in the benchmark year 1969, while dental costs were 247 percent higher. In Table 13, the rate of these increases is compared to the more modest growth in salaries for Federal district judges. The rate of growth in the cost of premiums for two popular health insurance plans is particularly noteworthy. Since 1969, premiums for the insurance plans selected increased seven and eight-fold.

Because the average age of active Article III judges is 57, 31/ and because judges are appointed to positions of life tenure, they can be expected to require more and more in the way of medical services. The current level of compensation gives judges little ability to absorb these sharply rising costs, especially if they have dependents with

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31/ Federal Judges Survey, responses to question 24.

TABLE 13

INCREASE IN MEDICAL COSTS COMPARED TO INCREASE IN DISTRICT JUDGE'S SALARY

Year	Medical Costs	Dental Costs	Health Insurance Premiums		District Judge's Salary
			Carrier A	Carrier B	
1969	0%	0%	0%	0%	0%
1970	7%	6%	25%	12%	0%
1971	13%	12%	17%	11%	0%
1972	17%	17%	11%	44%	0%
1973	22%	21%	-3%	16%	0%
1974	33%	30%	15%	48%	0%
1975	49%	43%	-27%	6%	5%
1976	63%	52%	15%	65%	10%
1977	79%	64%	-10%	77%	36%
1978	94%	75%	3%	104%	36%
1979	112%	90%	-5%	98%	54%
1980	135%	113%	-6%	121%	68%
1981	160%	133%	14%	151%	76%
1982	190%	151%	18%	244%	83%
1983	215%	168%	102%	348%	83%
1984	235%	190%	278%	435%	90%
1985	256%	208%	222%	455%	97%
1986	282%	225%	155%	444%	97%
1987	308%	247%	352%	507%	124%
1988	334%	271%	677%	766%	124%

Notes:

- General medical and dental costs represent the medical and dental services components of the Consumer Price Index. Figures for 1988 are estimates.

- Health insurance premium amounts are from the Office of Personnel Management's Federal Personnel Manual and payroll office advisories. Amounts are based on premiums paid by Federal employees for high option health insurance offered by two carriers, Aetna and Blue Cross/Blue Shield.

- Government health insurance premiums are scheduled to increase an average of 26 percent in 1989. See "Federal Insurance to Increase," Washington Post, Sept. 2, 1988 at A1.

medical needs. Most judges will find themselves in that position at some point, since as one judge noted, "frequently, one is just freed from the children's financial dependency in time to take on parents, aged and ailing, who are even more expensive to care for." 32/ The growing gap between increasing costs for health care and the much smaller salary increases for Federal judges thus has special importance for a maturing judicial population.

C. Judicial Salaries in Other Jurisdictions

The inadequacy of Federal judicial salaries may also be demonstrated by comparison to other salaries. Probably the most relevant measure of comparison is the level of salaries judges receive in other jurisdictions. We examined the judicial salary levels of two other countries and of the 50 states for positions comparable to those in the Federal court system. The information set forth below indicates that Federal judicial salaries are falling behind the level of compensation paid in other jurisdictions. Perhaps mindful of the large differences in pay for similar judicial positions, one Federal judge observed that "it's the greatest job on earth, but I do believe the salary level is a national insult, given our responsibilities." 33/

1. Great Britain and Canada

Table 14 sets forth the value in U. S. dollars of judicial salaries for similar offices in Great Britain, Canada, and the United States. Although the precise structure of the court system varies among the three countries, each has a national court system with

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32/ Federal Judges Survey, anonymous response.

33/ Federal Judges Survey, anonymous response.

TABLE 14

JUDICIAL SALARIES IN OTHER COUNTRIES

	Chief Justice Highest Court	Associate Justice Highest Court	Appellate Court Judges	Trial Court Judges
Great Britain	$145,820	$134,702	$129,570	$117,169
Canada	135,888	125,850	115,895 to 105,940	105,940
United States	115,000	110,000	95,000	89,500

Notes:

- Amounts are expressed in U.S. dollars using foreign exchange rates as follows: £1 = $1.7105 U.S. and $1 Canadian = $0.8296 U.S. *Wall Street Journal*, August 5, 1988, at 23.
- Data are from the Review Body on Top Salaries, *Eleventh Report on Top Salaries* (Report No. 27, April 1988) (Great Britain), and from Chief Judge N. T. Nemetz, Chief Justice of British Columbia (Canada).

status, responsibilities, and power similar to the Federal courts in the United States, and all three arose from the same historical, cultural, and legal tradition. A comparison of judicial salaries in the three countries is therefore highly relevant.

As Table 14 illustrates, salaries for Federal judicial positions in the United States are far below their international counterparts. At current exchange rates, for example, the chief judges of the highest national courts in our sister nations enjoy salaries $20,000 to $30,000 higher than that of the Chief Justice of the United States. Similar disparities exist at the appellate and trial court levels. Significantly, salaries of trial court judges in both Great Britain and Canada are well over $100,000, compared to $89,500 for United States district judges.

2. State Courts

Most state court systems in the United States closely resemble the Federal system, with trial and appellate courts ultimately leading to discretionary review by the Supreme Court of the United States. The state and Federal systems differ, however, in that state courts are generally confined to issues of state law, whereas Federal courts must adjudicate issues of both state and Federal law. Further, state courts would be expected in many states to entertain a less sophisticated body of cases than the relatively select controversies, involving complex Federal statutes and regulations as well as constitutional issues, reaching the Federal courts. Yet despite the more limited ambit of state court jurisprudence, many state judicial positions are paid at a rate at or above the level of Federal judicial salaries.

Table 15 presents the salary levels for trial and appellate judges in twelve states and the range of judicial salaries in all 50 states. As the Table makes clear, four jurisdictions, New York, California, Michigan, and the District of Columbia, set salaries for judges of their highest appellate courts equal to or above the salaries paid to judges

TABLE 15

TOP TWELVE STATE JUDICIAL SALARIES

	Highest Appellate Court	Intermediate Appellate Court	General Trial Court
New York	$115,000	$102,500	$95,000
California	103,469	97,003	84,765
Michigan	100,000	96,000	84,600 to 92,000
District of Columbia	95,000	—	89,500
Illinois	93,266	87,780	75,113
New Jersey	93,000	90,000	85,000 to 88,000
Florida	92,822	87,362	81,902
Pennsylvania	91,500	89,500	80,000
Massachusetts	90,450	83,708	80,360
Virginia	88,286	83,872	81,959
Maryland	86,900	83,800	82,200
Alaska	85,728 to 97,728	79,992	77,304 to 90,828
All 50 States (range)	115,000 to 50,452	102,500 to 59,052	95,000 to 49,178

Note: Data are from the National Center for State Courts, Survey of Judicial Salaries, Vol. 14, No. 1 (July 1988). Salaries are for Associate Judges of each court. On many courts, Chief Judges' salaries are $2,000 to $5,000 higher. In addition, many courts provide pay supplements and fringe benefits. For example, appellate judges in Michigan are assigned a state car for their use.

of the 13 Federal courts of appeals. The highest salary level for this position, $115,000 for New York Court of Appeals judges, is fully 21 percent more than the salary level for the comparable Federal courts of appeals. Similarly, trial court judges in four jurisdictions, New York, Michigan, the District of Columbia, and Alaska, receive salaries equal to or above those paid to Federal district judges, and two more states approach those levels. Many state judges also receive pay supplements (such as for supervisory responsibilities and geographic locations) and fringe benefits that are not available to Article III judges in the Federal court system. Commenting on the disparity between state and Federal judicial compensation, one Federal judge reported that he "didn't realize the fringes compared so unfavorably with state work." 34/

It is important to emphasize that state court judges too may be considered underpaid, even though salaries in some states exceed Federal levels. As a Texas Supreme Court Justice stated in resigning his position, "I'm tired of being the lowest-paid lawyer in the courtroom." 35/ Many states have mounted efforts to raise judicial pay in recent years. For example, a recent report recommended 15 percent pay increases for judges in California. That would bring trial court judge salaries there to approximately $97,500 per year. 36/ In New York, the State Temporary Commission on Executive, Legislative and Judicial Compensation proposed similarly large raises. New York Court of Appeals judges would receive $134,500 annually while trial court judges would receive

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34/ Federal Judges Survey, anonymous response.

35/ "Quotes," ABA Journal, September 1, 1988, at 30. No doubt many Federal judges share this view.

36/ Los Angeles Daily Journal, July 7, 1988, at 1.

$111,000 under this proposal. 37/ Salary increases are also under consideration in Illinois. 38/

3. "Rent-a-Judges"

Another relevant measure of comparison for Federal judicial salaries is compensation in the private sector. In this regard, the phenomenon of private "Rent-a-Judge" services is of particular interest. These services have appeared in recent years offering a private alternative to the public courts, where backlogs can lead to lengthy delays and sizable litigation costs. Rent-a-judge services use retired judges to resolve disputes through a variety of procedures ranging from informal mediation to trial. According to a recent article, private judges receive fees from $135 to upwards of $350 an hour for their work. Private judges can easily make $200,000 to $300,000 annually, even working less than full-time. 39/ Needless to say, this compensation far exceeds the salary levels of any Federal or state court judge.

This is not to suggest that Federal judges should receive hourly or even annual compensation approaching the levels paid to private judges who market their services in commerce. But the salary levels of privately paid "judges" are instructive. They serve as a measure of the market's valuation of the skills and experience judges supply, and they point up the extraordinarily lucrative area of practice available to judges if they leave the bench. For senior judges in particular, the ability to render a valuable public service for higher remuneration by practicing as a private "judge" — and perhaps to reduce growing Federal caseloads as well — may have special appeal. If judicial salaries

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37/ New York Law Journal, June 30, 1988, at 1.

38/ Chicago Sun-Times, March 30, 1988, at 20.

39/ The Recorder, May 10, 1988, at 1.

are not substantially improved, some senior judges could be motivated to retire from the judicial office under 28 U.S.C. § 371(a) in order to pursue this avenue of practice.

D. Salaries in the Legal Profession

Other than "rent-a-judges," it is difficult to identify jobs in the private sector that are truly comparable to the position of a Federal judge. The latter involves a combination of responsibility, power and independence unmatched in most areas of law and business. In addition, the satisfactions of rendering public service in a highly visible and respected role and of serving in a lifetime appointment are material benefits that, while difficult to quantify, certainly compensate somewhat for the reduced salary levels associated with Government service.

We agree that, for these reasons, precise salary parity between the public and private sectors is inappropriate. Yet evidence of private sector compensation is nevertheless relevant to the question of fair judicial compensation. The amount by which private compensation exceeds a Federal judge's salary serves as a rough approximation of the financial sacrifice judges make when they accept appointment to the bench and as they continue to serve. This sacrifice cannot continue to grow if the Judiciary is to be able to attract and retain the best and brightest in the legal profession.

At the time of the last Quadrennial Salary Commission in 1986, the Corporate Committee for Fair Compensation of the Federal Judiciary and the American College of Trial Lawyers submitted data demonstrating that salaries for many legal positions far exceeded the salary levels for Federal judges. 40/ That situation has only worsened in the last two years as salaries for lawyers, law professors and other legal professionals have climbed.

40/ See Promises Made, Promises Still Unkept, accompanying this submission.

1. Private Law Practice

The gap between judicial salaries and salaries in the private sector is probably most pronounced with respect to law firm compensation. While judicial salaries have remained relatively static—and in fact lost ground to inflation—salaries for private practitioners have reached record levels. This is true at virtually all levels of private practice, from brand new associates to experienced senior partners. At the lower end of the spectrum, the following figures are illustrative:

- The average salary for first-year associates at the 20 largest law firms in New York was $71,700. One firm offered starting salaries of $77,000. 41/
- The average salary at the same 20 firms for associates with only seven years of experience was $139,000. Associates five years out of law school averaged salaries of $114,800—more than any Federal judge except the Chief Justice. 42/
- Supreme Court law clerks joining the Washington, D. C. office of a New York firm in 1988 will receive $101,000 in salary and bonuses—almost as much as the Associate

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41/ "Law Journal Survey Reveals Wide Ranges in Associate Pay," N. Y. Law Journal, April 18, 1988, at 1, col. 3.

42/ Id.

Justices earn and more than Circuit and District judges. 43/

The phenomenon of associate pay exceeding judges' salaries is not a theoretical one, nor is it isolated. Many judges responding to the Federal Judges Survey described their own observations of former law clerks who entered private practice and out-earned them in the space of a few short years. One judge reported, "all of my former law clerks in practice four years or more earn more than I do." Another described a clerk who plans to join a New York law firm this year and "expects to earn between $105,000 and $120,000 in her first year of private practice (salary plus clerkship bonuses)."

At the higher end of the private practice compensation spectrum are partners' salaries. These salaries provide the most relevant comparison because of the resemblance between law firm partners and Federal judges in terms of their age, education, background, and experience. According to a recent survey, partner income at law firms throughout the country greatly exceeded Federal judges' salaries. The margins were greatest for lawyers with more experience, at bigger firms, in the top echelons of the profession, and in larger cities.

The survey, conducted by Altman & Weil, Inc., reported peak earnings of approximately $340,000 for the top ten percent of partners with 25 years of experience in cities with populations over one million. In cities with slightly lower populations, partners with the same position and experience reported earnings of just under

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43/ "Large Salaries, Big Deals Lure High Court Clerks to N. Y. Firm," The Recorder, May 24, 1988, at 2.

$300,000. 44/ Ironically, these are the same age, position and experience levels of most Federal judges, whose salaries are literally dwarfed by comparison. 45/

Compensation levels for experienced attorneys at larger law firms were even higher. The top ten percent of partners with 25 years of experience at law firms of 41 to 74 lawyers reported earnings slightly over $300,000, while at law firms of 75 or more lawyers this same group earned close to $425,000 annually. Similarly, partner earnings varied by geographic region. In the northeast and east central regions of the country, the top ten percent of partners with 25 years of experience earned approximately $265,000 to $320,000. Similarly situated partners in the south and west earned slightly less, but still substantially more — at least two and one-half times more — than Federal judges. Indeed, the median income of law partners in practice for 25 years at law firms of all sizes across the country was $157,479 last year, far surpassing Federal judicial pay at all levels.

Salaries of top corporate officials provide another useful perspective on income levels in the business world. A recent Business Week survey of the top 1,000 companies found that the average salary for chief executive officers was $651,000 in 1987. The salary level ranged up to $13 million. 46/ Compensation for experienced corporate

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44/ Altman & Weil, Inc., The 1988 Survey of Law Firm Economics, at 93, 95-100, 104-05, 110-11.

45/ According to the Federal Judges Survey, the average age of active Federal judges is currently 57 years. At that age, most lawyers would have been in practice at least 25 to 30 years. The survey also reveals that almost one-half of Federal judges live in metropolitan areas with populations over one million, and close to two-thirds live in areas with populations over 500,000. Because judicial nominees who join the bench from private law firms are generally drawn from the top ranks of practice, we believe salaries for the top ten percent of law firm partners provide the most relevant measure of comparison to Federal judicial salaries.

46/ "What the Boss is Really Like," Business Week, Oct. 23, 1987, at 37.

in-house lawyers also generally exceeds Federal judicial salaries by a wide margin. One recent study found that the average salary for corporate general counsels was $234,902. 47/ Another survey reported that in 1987 the middle range of compensation for chief legal officers, such as corporate general counsels, was $105,513 to $214,577. Even managing attorneys in corporate law departments, who hold positions at the third or fourth level down from the top-ranking legal officer, received compensation equalling or exceeding the salary of circuit and district judges. The median salary for this position in 1987 was $94,904. 48/

One difference between judges and private practitioners with respect to their income levels is the connection between compensation and experience and seniority. For Federal judges, of course, there is no connection: all judges within a judicial office receive the same salary; judges in their first year on the bench receive the same salary as those with 20 or 30 years' experience. Private practitioners, in contrast, have ample opportunities to increase their earnings as their experience and expertise grow. Thus an associate at a top New York law firm starting at $71,000 a year can contemplate increases over the next seven years building to a salary as high as $169,000. 49/ Compensation for lawyers after their initial tenure as an associate generally continues climbing until near retirement age. The 1988 Altman & Weil survey showed annual partner compensation for the upper ten percent of lawyers starting at approximately $130,000 in the first year as a partner and rising steadily to more than double that figure,

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47/ "In-House Pay Up," National Law Journal, Sept. 5, 1988, at 2 (citing Arthur Young & Co. annual study of corporate law departments).

48/ Altman & Weil, The 1988 Survey of Law Department Salaries at 10.

49 "Law Journal Survey Reveals Wide Ranges in Associate Pay," N. Y. Law Journal, April 18, 1988, at 1, col. 3.

$306,736, over the next 20 years of practice.[50] Men and women considering appointment as a Federal judge thus face the prospect not only of an immediate salary cut, but of a major loss of the gradual increases in compensation most private practitioners enjoy.

An additional compensation-related distinction between judges and private practitioners is in the area of benefits and perquisites. Federal judges receive several employment benefits, including a noncontributory retirement system at age 65, (but generally nothing beforehand), and certain insurance and survivor benefits for which they must contribute a portion of their salary.[51] The benefits available to attorneys in private practice are much more attractive, and more numerous, than these. Of course, all firms do not offer all possible benefits. Those that choose to do so may offer:

- generous pension and profit-sharing plans;
- paid medical, dental, disability and life insurance;
- club memberships and dues;
- professional association memberships and dues;

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[50] Altman & Weil, Inc., The 1988 Survey of Law Firm Economics, at 92-93.

[51] Appointment as a Federal judge brings with it a guarantee of lifetime tenure and retirement at full pay upon reaching age 65 with at least 15 years of service. *See* 28 U.S.C. § 371. This is certainly an attractive retirement option for those judges who survive to age 65 or older. However, there are substantial limitations to the judicial retirement system compared to many private and public sector systems including the Civil Service Retirement System and the Federal Employees Retirement System available to almost all other Federal employees. *See* 5 U.S.C. ch. 83, 84. Unlike most pension systems, there is no early vesting in judicial retirement, there is no provision for taking a reduced annuity with the pension to continue to a survivor, and there is no provision for an early retirement at a reduced amount. Nor is there a provision for leaving the bench with a protected vested amount to be distributed upon reaching age 65. In short, judicial retirement has none of the flexibility common to most retirement systems which, to many judges concerned about family responsibilities, survivor benefits, and their own longevity, may be far more valuable than receiving full salary for life at age 65.

- continuing legal education course fees;
- expense accounts; and
- automobiles or auto allowances.

The availability of generous paid benefits in private practice further enhances the compensation position of private attorneys vis-a-vis Federal employees generally and Federal judges in particular.

2. Academia

The academic life has long been considered a cloistered one, removed from the aggravations of the commercial world as well as from its more excessive material rewards. For lawyers who choose academia as a profession, the reality diverges from this traditional view. In fact, the financial rewards of a legal academic career approach the rewards available from private law practice, for both law school deans and full-time law professors.

Table 16 records the compensation paid at the 25 highest-paying law schools.[52] Several aspects of this table are worthy of note. First, with respect to salaries for law school deans, all 25 schools represented exceeded the salary levels for every Federal judge, up to and including the Chief Justice. Although more detailed information for other schools is not readily available, it appears that these compensation levels are not aberrations. The median salary for law school deans at 171 schools across the country was

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[52] Information about salaries and benefits at individual law schools is notoriously difficult to gather. Many law schools are private institutions that regard this information as proprietary and confidential. We were able to obtain salary data for the 25 highest-paying ABA-approved law schools only on an anonymous basis. We also obtained the median salary levels at 171 schools across the United States.

TABLE 16

TOP 25 SALARIES AT ABA-APPROVED LAW SCHOOLS

	Deans (12-Month)	Professors (9-Month)
	$148,000	$121,000
	144,000	121,000
	142,000	118,000
	140,000	117,500
	140,000	117,000
	138,000	116,000
	138,000	115,400
	138,000	115,000
	136,000	114,200
	135,000	107,500
	135,000	107,100
	135,000	106,800
	130,910	106,200
	130,000	105,500
	130,000	105,000
	130,000	105,000
	130,000	105,000
	130,000	105,000
	130,000	105,000
	126,500	105,000
	125,939	104,000
	125,800	104,000
	125,000	103,000
	125,000	102,500
	123,200	102,000
Median: (171 Law Schools)	97,125	57,000

Notes:

- Salaries do not include fringe benefits.
- Data are from an anonymous survey of 171 U.S. law schools (excluding Puerto Rico).

$97,125 last year. This means that salaries for the deans of at least half the nation's law schools exceeded salaries for both district and circuit judges.

A second noteworthy area is law professor compensation. As Table 16 shows, salaries at all 25 of the highest-paying law schools were in six figures, surpassing salaries for both district and circuit judges. Moreover, these salary levels are for a nine-month school year, and professors are generally free to supplement their law school earnings in the remaining three months of each year. Assuming that law professors can earn a proportionate amount over the full twelve months, the salaries recorded in Table 16, expressed on an annual earnings basis, would range up to $161,333. Similarly, the median salary for law professors, expressed as annual earnings, equals $76,000.

Besides enjoying a three-month break each year from teaching duties, law professors generally have other opportunities for outside employment during the regular school year. Many professors serve as consultants, write and publish, research, or affiliate with law firms. As respected and accomplished experts in the law, professors can expect to be compensated at top hourly rates for their services. Earnings from these activities can greatly supplement — and in some specialties perhaps double or triple — total annual earnings.

Finally, Table 16 is noteworthy for something it does not record: the value of fringe benefits. As a general rule, law school fringe benefits equal approximately 21 percent of base salaries. Benefits offered include medical, retirement, and life insurance benefits. In addition — and of particular interest to lawyers in mid-career — many law schools pay some or all of the tuition expenses for children of their employees. 53/ This

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53/ *See* Administrative Office of the United States Courts, *The Need for Increases in Salaries of United States Judges and Other Judicial Personnel* at 16-17 (1984).

can produce a substantial income supplement for those with college age children, and it further increases the disparity between academic and judicial compensation.

Remarking on this growing disparity, one judge expressed the view that "the fact that top law school teaching salaries are substantially above Federal judicial salaries is a sad commentary indeed." 54/ This is not to denigrate academic positions, whose pay and benefits are fully commensurate with the pressures and demands of the profession. Rather, the view reflects the dismay many judges feel upon observing that salaries in almost all other legal disciplines — even those that traditionally are not considered highly remunerative — have surpassed their own. So too, the elevation of academic salaries compared to the Judiciary further expands the pool of candidates for judicial office who face severely reduced earnings upon appointment to the bench.

E. Salaries in Other Government Sectors

1. Special Groups of Federal Employees

The twin problems of rising compensation in the private sector and falling real Federal salaries are handicapping efforts to recruit and retain qualified workers throughout the Federal workforce. Jobs that are in particular demand or that offer substantially increased pay elsewhere are becoming especially difficult to fill. Recent figures show that Federal salaries are now 26 percent lower than those for equivalent jobs in the private sector. 55/

One response to this development is the creation of separate pay rates for special Federal employee groups. Congressional attention recently focused on scientific and

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54/ Federal Judges Survey, anonymous response.

55/ *Washington Post*, Aug. 26, 1988, at C2 (describing 1988 pay comparability study).

technical positions in the Defense Department and NASA. 56/ Proposals are under consideration to allow pay raises of up to 60 percent for hard-to-fill jobs in these agencies. Other agencies experimenting with special pay and personnel systems include the National Bureau of Standards, the Veterans Administration (for its medical personnel), the National Institutes of Health, and the Federal Reserve Board. The latter institution, a nonappropriated fund instrumentality not subject to congressional budget control, plans to set employee salaries at levels comparable to private market rates. 57/

Federal agencies are also experiencing increased difficulty filling basic staff jobs in cities with high living costs. The Federal Office of Personnel Management can approve special pay rates for geographic areas and has done so for certain positions in Boston, San Francisco, Washington, D.C., and New York. 58/ Even with these allowances, a recent study recommended pay raises of 23 percent for Federal workers in the New York City area. 59/

Proposals to raise pay for special employee groups may partially solve a nagging problem in Federal employment. After a certain point, the intangible rewards of public service cannot overcome the financial sacrifice of foregoing better-paying private employment and living in the country's most expensive urban areas. Higher pay should help to attract qualified employees to hard-to-fill positions even in high-cost locales. Federal judges do not differ from other employees in these respects. Like other special

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56/ "The Pentagon vs. the Civil Service," The Washington Post, April 12, 1988.

57/ Weekly Federal Employees' News Digest, June 6, 1988, Vol. 37, No. 43, at 3-4.

58 See 5 U.S.C. § 5303, 5 C.F.R. Part 530 (1988).

59/ Moran, "Low Federal Pay Sours Life in the Big Apple," Government Executive at 18 (July 1988).

employees, their salaries should be set at a level that encourages qualified applicants to seek the position and that does not result in an insurmountable financial sacrifice for those appointed in high-cost urban districts.

2. State and Municipal Officers

Individuals who work in state and municipal offices share with Federal employees the satisfaction of serving the public and contributing to the development of public policy on central governmental issues. In recent years, Government employers at the state and local level have shown a willingness to recognize the level of responsibility inherent in senior public service jobs by paying salaries commensurate with the demands of the office. This helps to minimize the private sector's attraction to those with highly sought-after skills and experience. A few examples of salary levels for state and local Government positions are illustrative:

- the General Manager and Chief Engineer of the Department of Water and Power for the city of Los Angeles, California, has an authorized salary range up to $188,296, while the General Manager of Airports has an authorized salary range up to $166,685;
- in Los Angeles County there are at least 281 public positions with authorized salaries of $100,000 or more, including several law enforcement positions; 60/

60/ Information furnished by the Office of the Los Angeles City Attorney.

- the Port Authority of New York and New Jersey pays its Executive Director $170,000 a year, while the Public Affairs Director receives $134,966 annually; 61/ and

- the Director of the Audubon Park Zoo in New Orleans recently received a pay increase to $125,000 per year. 62/

Clearly, these employers have recognized the wisdom of paying the most to those officials they value the most. The Federal Government could well benefit by following this example.

V. Bankruptcy Judges and Magistrates

This submission would not be complete without some mention of the compensation question as it affects bankruptcy judges and United States magistrates. Bankruptcy judges, who are appointed by the United States courts of appeals to serve for 14-year terms, handle the bulk of bankruptcy litigation in the district courts. 63/ Full-time United States magistrates, who are appointed by the district courts to eight-year terms, determine numerous pretrial matters, conduct pretrial hearings, and hold trials in civil and criminal cases upon designation by the district courts. 64/ These judicial officers

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61/ New York Times, Feb. 7, 1988.

62/ USA Today, May 27, 1988, at 12A.

63/ 28 U.S.C. SS 151-158.

64/ 28 U.S.C. SS 631-639. This submission focuses on full-time magistrates only. The Judiciary also is served by approximately 170 part-time magistrates.

contribute significantly to the administration of justice in the United States and are an integral part of the Federal judicial system. When their ranks suffer the debilitating effects of inadequate compensation—in terms of ebbing morale, premature departures and recruitment difficulties—the Judiciary as a whole suffers as well.

For this reason, it is worth focusing on the importance of salary reform to bankruptcy judges and magistrates. One critical reform has already occurred. Under a recent statutory revision, salaries for these judicial officers were expressly tied to salaries for district judges and set at a level equal to 92 percent of a district judge's pay. 65/ This revision served to rectify the loss of salary parity between bankruptcy judges and magistrates on the one hand and other high-ranking Judicial and Executive Branch officers on the other. This loss of salary parity had led to the unfortunate situation of bankruptcy judges and magistrates earning less than other Federal officers—such as United States attorneys, clerks of court, and United States trustees—who appeared before them or provided administrative assistance to them. 66/

The fact remains, however, that although salaries for bankruptcy judges and magistrates are now linked to Article III judges, the salaries for all of these officers are still inadequate to continue attracting and retaining the highest caliber legal talent. Bankruptcy judges and magistrates face the same declining purchasing power and escalating costs for major consumer purchases as Article III judges. Like circuit and district judges, they work in a legal environment where salaries for private practitioners far exceed their own and where their pay has not kept pace with the increasing volume

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65/ Judiciary Appropriations Act of 1988, Pub. L. No. 100-202, § 408, 101 Stat. 1329-26 to -27 (1987), amending 28 U.S.S. §§ 153(a) and 634(a) (effective October 1, 1988).

66/ See Promises Made, Promises Still Unkept at 143-49 (accompanying this submission).

and complexity of their work. And like circuit and district judges, they are experiencing the combination of tightening financial pressures on the bench and lucrative opportunities off the bench that show signs of severely weakening the historical attraction of long-term judicial service. A few exemplary statistics illustrate these points.

Looking first at the nation's 271 bankruptcy judges, recent statistics show that annual bankruptcy filings for the year ended June 30, 1988, reached the record level of 594,567. This produced an average caseload per judge of 2,194 cases, more than double the average caseload 20 years ago. 67/ This imposing volume of filings includes petitions filed by major corporations seeking massive business reorganizations and involving such critical public issues as pension rights, union employment priorities, public and employee health and safety risks, and other matters of national importance. Only dedicated and highly experienced judicial officers can be expected to handle a caseload of this magnitude and difficulty.

In view of the complexity and wide-ranging impact of many bankruptcy cases, it is not surprising that the experience gained on the bankruptcy bench is highly prized in the private sector. Bankruptcy law is one of the better compensated legal specialties. A recent study of lawyer compensation reported that the top ten percent of law firm partners across the country who practice in the bankruptcy area earned an average of $232,362 last year. 68/ This is almost three times the current salary of bankruptcy judges.

67/ Data are from the Statistical Analysis and Reports Division, Administrative Office of the United States Courts. Although bankruptcy judges are of course compensated with an annual salary and not on a per-case basis, it is revealing to note that at the current salary level this enormous volume of filings translates into a meager $38 per case.

68/ Altman & Weil, Inc., The 1988 Survey of Law Firm Economics at 129.

As in the case of circuit and district courts, departures from the ranks of the bankruptcy courts have been rising in recent years. From the late 1950's through the 1970's, resignations from the bankruptcy bench occurred on the average twice a year. In contrast, resignations in the last eight years have risen to between five and six a year. The increased pace of resignations exceeds the increase in bankruptcy judges over the same time period. 69/

The overall turnover rate in the bankruptcy courts has also reached grave proportions. In the last ten years a total of 96 judges have retired, while another 57 judges have resigned before the expiration of their terms either to enter private practice or to accept another Federal appointment. This totals 153 departures from courts whose membership over the same period averaged 241 judges. In other words, the bankruptcy courts have had to replace 63 percent of their judges in the last decade. It is reasonable to suppose that at least some of this turnover is attributable to the failure of salaries to keep pace with spiraling living costs and the lure of earnings in private practice. This unprecedented level of change presents a real threat to the stability and continuity of the nation's bankruptcy system.

Like bankruptcy judges, only recently have magistrates regained salary parity at 92 percent of the district judge salary level. This amount falls well short of earnings in the private sector for lawyers with the sorts of civil and criminal litigation skills in which magistrates excel. For example, the top ten percent of litigation partners across the country earn in the neighborhood of $230,000 annually, according to the Altman &

69/ Data are from the Bankruptcy Division, Administrative Office of the United States Courts. These figures reflect only judges who resigned from the bench to reenter private practice. They do not include resignations to accept other Federal appointments, retirements, or terminations (i.e., failure to seek or obtain reappointment at the completion of a term). The ranks of bankruptcy judges grew from 171 in 1959 to 271 as of June 30, 1988.

Weil salary survey. Thus magistrates share with other judicial officers an inflation-eroded salary in an area of legal practice where healthy six-figure earnings are clearly the norm.

In order to assess the effects of financial pressures on magistrates' continued service, the National Council of United States Magistrates conducted a survey similar to the Federal Judges Survey described above. 70/ The responses closely paralleled those of circuit and district judges. Magistrates were asked to state how likely they were to continue serving for various time periods under the current system of salary increases and under an adjusted system that would routinely adjust salaries to keep pace with inflation. The magistrates who responded indicated that they were two to three times more likely to remain on the bench for six years or longer under an adjusted system than under the current one. The survey also sheds light on possible future attrition from the ranks of magistrates. Between 20 and 29 percent of the magistrates who responded said they had very seriously considered either resigning before age 65 or not seeking reappointment, for reasons primarily related to salary. Between 40 and 55 percent had given at least some consideration to these options, and 21 percent reported having taken specific steps in that direction, such as looking for another job.

Possible future recruitment difficulties are also apparent from responses to the Magistrates Survey. Magistrates were asked how interested they would be in seeking appointment under the current salary system and under one adjusted routinely to keep pace with inflation. Almost three times as many magistrates said they were extremely interested in appointment under an adjusted system compared to the current system.

70/ The Council distributed copies of the survey to the approximately 290 full-time magistrates and received 232 returns for an 80 percent response rate. The survey questionnaire and tabulated results are available from the Council.

Conversely, while only a handful of magistrates said they were not at all interested in appointment under an adjusted salary system, 19 (nine percent of those who responded) expressed this view toward appointment under the current salary system.

The need for salary reform is as pressing for bankruptcy judges and magistrates as it is for circuit and district judges. Because bankruptcy judges and magistrates are now explicitly linked to district judges' salary, they will share in whatever increases result from the work of the Quadrennial Salary Commission. We urge the Commission not to lose sight of the beneficial effects their actions will have on the nation's bankruptcy judges and magistrates.

VI. Conclusion

The foregoing submission offers a bleak picture of Federal judicial service: salaries that are rapidly losing ground compared to inflation and compared to other professions; rising costs for major consumer purchases; growing disenchantment with the resulting financial sacrifices; and increasing thoughts of early departure from the bench. Under the circumstances, it is fair to wonder why, if the situation is indeed so bleak, any judges would accept appointment or long remain in service. The answer is in fact a complicated one, with several facets.

First, and perhaps most compelling, judges stay because of their commitment to public service. As noted earlier, most judges consider the opportunity to serve the public to be the single greatest advantage of judicial office. They know when they assume office that the position offers life tenure, and they view acceptance of the office as an implicit promise of lifetime service that they are understandably reluctant to break. Indeed, many judges consider the guarantee of life tenure as conveying more of a commitment than a benefit. This strong sense of dedication is further enhanced by the fact that judges truly love their jobs. A common characterization in responses to the

Federal Judges Survey was that it is "the greatest job in the world" and "the pinnacle of any lawyer's aspirations." 71/

For judges sharing these attitudes — who are no doubt the majority of judges — the financial sacrifice must place intolerable pressures on them and their families for resignation to be considered seriously. Unfortunately, the situation is nearing that point. More than one judge remarked, "my family is suffering because I enjoy my work." 72/

A second reason judges stay despite the financial disadvantages of the position is that for many money is simply not the controlling issue. It goes without saying that no one expects to get rich on a Federal judge's salary; those who place a high priority on money generally have vastly superior earnings opportunities in private practice. But some judges have even less reason for concern about their salary levels. One example is the judge who explained, "when I went on the bench my kids had finished college, my house was paid for, and I had accumulated a few investments so I could afford to be a Federal judge." 73/ Other judges have independent income or working spouses whose contributions ease their overall financial burdens.

The willingness of these individuals, in effect, to subsidize their positions out of personal income is truly admirable. It is, however, beyond the means of many who are on the bench or aspire to it, particularly younger men and women who are not from wealthy families and who have children still to educate. These judges may well share the sentiments of the judge who said, "it is a wonderful job. If I didn't have to eat and care

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71/ Federal Judges Survey, anonymous responses.

72/ Federal Judges Survey, anonymous response.

73/ Federal Judges Survey, anonymous response.

for my family, I would do it for nothing." 74/ But they do not share with their older and wealthier counterparts the ability to forego a fair salary and still provide for their personal and family needs.

Finally, there are at least a few judges who have remained on the bench in the hope that the current Quadrennial Salary Commission process will lead to fair and adequate judicial salaries. These judges have adopted a "wait and see" attitude. Some are hopeful that salary inequities will be rectified, others despair at that prospect, but all are willing to wait at least one more year.

These varying factors have combined to limit at least temporarily the number of judicial departures that might otherwise have occurred. They do not, however, provide any long-term reassurance. If judicial compensation remains an unredressed problem, the balance for many judges may begin to tip away from continued service. A far more reassuring — and appropriate — way to counteract the financial disadvantages of a Federal judgeship is through a serious effort to restore and maintain judicial salaries.

In urging this Commission to boost judicial salaries, we by no means are suggesting that salaries should be set at a level calculated to attract even the most prosperous and successful attorneys. Simply put, money is not and should not be the primary motive for entering public service. Instead, salaries must be set at a level that neither deters entry nor forces premature departure; a level that allows individuals short of old age, from modest backgrounds, and with family responsibilities, to accept the challenge of judicial service; a level that does not progressively penalize those dedicated individuals who choose to continue to serve. In the words of a recent appointee:

> Unless we wish to restrict Federal judgeships to the narrow band of lawyers who are independently wealthy, personally ascetic,

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74/ Federal Judges Survey, anonymous response.

> ideologically driven, or insufficiently competent to make the salary level of Federal judges otherwise, the salary level must be adjusted upward dramatically. It is not only a question of attracting a broad range of competent lawyers to the bench; it is also a question of simple fairness to those who are making other sacrifices — in terms of loneliness and general withdrawal from community affairs — to serve the public. 75/

After participating intimately in past Quadrennial Salary Commission processes, the Committee on the Judicial Branch is convinced that decisions made this year will determine, for better or worse, the level of excellence of the Federal Judiciary for the next decade or more. This is to say that the absence of substantial relief after two decades of slippage, with no prospect of further help until 1992, will see scores of fine younger judges resigning their posts, dozens of experienced older judges opting early for senior status or actually resigning from the office, and increasing difficulty in attracting new judicial candidates of excellence from across the spectrum of the American legal profession.

Accordingly, we urge that any temptation to resort to half-way measures be resisted. After all, this — or less — was what happened to the last Quadrennial Commission recommendations in 1986 to 1987. The situation in the other two branches argues for the same conclusion. Not only does the Executive Branch face staggering problems in attracting and keeping highly competent senior executives, but the entire cadre of our top executive service is in the process of disintegrating because of the

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75/ Federal Judges Survey, anonymous response (emphasis added).

oppressive ceilings set for those at the summit. As for legislators, leaders increasingly are responding positively to pleas that public service no longer be subsidized through private honoraria. An attractive solution is honoraria reform coupled with adequate public compensation.

As for specific amounts, we would hope that the Commission would not attempt to second guess the political decisionmakers, the President and the Congress, but would give its collective professional judgment as to figures which would best serve the nation's needs in the years immediately ahead. In our view, there is absolutely no reason for this Commission's recommendations to fall below the levels proposed by the last Quadrennial Commission, which ranged from $130,000 to $175,000 (approximately $135,000 to $182,000 in 1988 dollars). The foregoing submission would certainly support recommendations above this floor and in the neighborhood of what former Chief Justice Burger recommended two years ago: $150,000 for district judges. Something approaching this figure would be consistent with the increases in pay enjoyed by the legal professional generally since 1969 and would be comparable to both the compensation now enjoyed by the average corporate general counsel and by the average senior partner at law firms of all sizes across the country. Only by undertaking serious salary reform measures, in this watershed year, can we begin to restore judicial salaries to their historic and appropriate benchmark levels. To fall substantially below such figures is to continue the fallacy of belief that the highest competence and character in Government can be acquired on the cheap.

Respectfully submitted,

Frank M. Coffin

Frank M. Coffin
United States Circuit Judge
Chairman, Judicial Conference
Committee on the Judicial Branch

Final Results
632 Records

APPENDIX

FEDERAL JUDGES QUESTIONNAIRE

Directions:

- *Please respond by checking the appropriate boxes.
- *Where factual information is requested, please provide as specific a response as you can.
- *Your individual responses will be anonymous.
- *Use the enclosed envelope to return your completed questionnaire to the General Counsel, Administrative Office of the United States Courts, Washington, D.C. 20544.
- *Return the questionnaire, and mail the enclosed postcard, no later than May 20, 1988.

I. Length and Characteristics of Service

1. In what year were you first appointed as a Federal judge? 1948-88 6 no response
most frequent: 1979 (100)

2. What is your present office?

145☐ United States Circuit Judge

476☐ United States District Judge

8☐ Judge, Court of International Trade

3 no response

3. Listed below are some features of the position of Federal judge. For each item, please indicate whether you agree that it is an important advantage of the job:

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	
• Opportunity for public service	490☐	120☐	16☐	4☐	1☐	1 no response
• Prestige	210☐	305☐	99☐	12☐	5☐	1 no response
• Life tenure	380☐	202☐	37☐	5☐	0☐	8 no response
• Level of financial compensation	11☐	49☐	98☐	188☐	282☐	4 no response
• Intellectual and legal challenges	408☐	209☐	9☐	4☐	0☐	2 no response
• Workload	28☐	87☐	197☐	206☐	106☐	8 no response
• Retirement and survivor benefits	86☐	211☐	110☐	113☐	97☐	15 no response
• Insulation from political activity	167☐	201☐	192☐	58☐	14☐	
• Administrative duties	13☐	61☐	297☐	203☐	57☐	1 no response
• Adequacy of office and courtroom facilities	90☐	272☐	168☐	69☐	32☐	1 no response

Advantage

A = public service
B = challenge
C = life tenure
D = independence
E = prestige
F = other

Drawback

A = compensation
B = isolation
C = workload
D = bureaucracy
E = support services
F = other

4. Please list below the single greatest advantage and the single greatest drawback of your position as a Federal judge:

- Greatest advantage: A=210 B=188 C=94 D=94 E=15 F=94 30=no response
- Greatest drawback: A=370 B=42 C=114 D=20 E=19 F=97 41=no response

5. Assuming that the current pattern of increases in salaries for Federal judges continues, how likely are you to continue serving as a judge for the following time periods:

	Very Likely	Somewhat Likely	Somewhat Unlikely	Very Unlikely		Can Retire Then
● 1 to 5 years	338 ☐	95 ☐	18 ☐	17 ☐	164 no response	☐ 73
● 6 to 10 years	194 ☐	120 ☐	44 ☐	38 ☐	236 no response	☐ 95
● 11 to 15 years	89 ☐	88 ☐	55 ☐	68 ☐	332 no response	☐ 89
● over 15 years	81 ☐	48 ☐	39 ☐	92 ☐	372 no response	☐ 48

6. If instead of the current pattern of salary increases your Federal judge's salary is routinely adjusted to catch up with past and future inflation, how likely are you to continue serving as a judge for the following time periods:

	Very Likely	Somewhat Likely	Somewhat Unlikely	Very Unlikely		Can Retire Then
● 1 to 5 years	423 ☐	30 ☐	2 ☐	1 ☐	176 no response	☐ 51

• 6 to 10 years	365 ☐	51 ☐	6 ☐	6 ☐	204 no response	☐ 53
• 11 to 15 years	252 ☐	53 ☐	25 ☐	15 ☐	287 no response	☐ 63
• over 15 years	220 ☐	31 ☐	23 ☐	41 ☐	317 no response	☐ 42

7. For reasons primarily related to salary, how seriously have you considered taking the following actions? (Please circle the appropriate number on the scale):

	Very Seriously						Not at All	
• Resigning from the bench before reaching age 65?	104 1	49 2	61 3	71 4	29 5	42 6	252 7	24 no response
• Electing senior status sooner than you otherwise would have?	186 1	58 2	37 3	42 4	17 5	22 6	234 7	36 no response
• Retiring from the office of Federal judge under 28 U.S.C. § 371(a) to return to the practice of law rather than electing senior status and continuing to serve as a judge under 28 U.S.C. § 371(b)?	144 1	68 2	43 3	52 4	29 5	43 6	218 7	35 no response

8. If you considered any of the above possibilities, or similar possibilities, did you take any specific actions to pursue them?

A = looked for job
B = wait and see
C = other

66 ☐ yes; please explain: A=52 B=19 C=32 529=no response

143 no response

423 ☐ no

II. Compensation

9. What was the total amount you personally earned the year before you became a Federal judge?

$18,000 to $950,000, average = $108,054
average 1978-88 = $119,969

10. What was your judicial salary the first year you became a Federal judge?

$15,000 to $95,000, average = $62,520
average 1978-88 = $70,231

11. Do you currently have other significant sources of income besides your salary as a Federal judge?

355 ☐ yes (go to question 12)
264 ☐ no (go to question 14)
13 no response

A = investments
B = teaching/writing
C = retirement
D = real estate
E = inheritance
F = spouse income

12. Please list additional sources of income you have besides your judicial salary (*e.g.*, law school teaching): A=252 B=89 C=76 D=60 E=29 F=68, 221 no response

13. Approximately how much additional income do you have each year besides your judicial salary? $350 to $400,000, 231 no response

14. Some of the financial consequences that may result from an appointment as a Federal judge are listed below. Please indicate what you have personally experienced as a result of your service as a Federal judge (leave blank any that do not apply to you):

	Increased Greatly	Increased Somewhat	Stayed the Same	Decreased Somewhat	Decreased Greatly	
• personal savings:	4☐	52☐	168☐	185☐	198☐	25 no response
• personal debt:	64☐	156☐	322☐	34☐	9☐	47 no response
• need to work part-time (e.g., law school teaching):	60☐	63☐	294☐	6☐	10☐	199 no response
• need for spouse to work:	90☐	102☐	265☐	7☐	9☐	159 no response
• standard of living:	3☐	32☐	306☐	223☐	45☐	23 no response
• ability to finance children's higher education:	7☐	23☐	173☐	150☐	169☐	110 no response
• ability to meet long-term medical care obligations:	3☐	32☐	359☐	97☐	54☐	87 no response
• need to sell assets:	88☐	183☐	230☐	11☐	19☐	101 no response
• financial security	21☐	111☐	208☐	169☐	89☐	34 no response

15. If you had not been appointed as a Federal judge and had continued on your most likely alternate career path, can you estimate what your salary would have been this year?

0 ☐ below $50,000

56 ☐ $50,000 to $89,000

135 ☐ $90,000 to $150,000

170 ☐ $151,000 to $200,000

110 ☐ $201,000 to $250,000

136 ☐ over $250,000

25 no response

16. How confident are you in your answer to question 15? (Please circle the appropriate number on the scale):

Not Confident at All						Extremely Confident	
5	6	13	30	61	143	355	19 no response
1	2	3	4	5	6	7	

17. What is the basis for your estimate?

123 ☐ published salary data

457 ☐ comparison to salaries of former colleagues

93 ☐ recent prior salary

118 ☐ other; please specify:________________________________

18. How satisfied are you with the present salary level for Federal judges?

Very Satisfied	Satisfied	Neutral	Dissatisfied	Very Dissatisfied	
4	31	67	275	248	7 no response
☐	☐	☐	☐*	☐	

average=4.17

19. If you had it to do over again, how interested would you be in seeking appointment as a Federal judge at the current level of compensation and with the current pattern of salary increases? (Please circle the appropriate number on the scale):

Not Interested at All						Extremely Interested	
55	57	70	103	106	81	150	10 no response
1	2	3	4 *	5	6	7	

average=4.59

20. If you had it to do over again, how interested would you be in seeking appointment as a Federal judge if the level of compensation were routinely adjusted to catch up with past and future inflation? (Please circle the appropriate number on the scale):

Not Interested at All						Extremely Interested	
3	3	7	18	29	104	459	9 no response
1	2	3	4	5	6 *	7	

average=6.56

III. Recruitment

21. Consider the potential candidates for Federal judgeships that you know. What percentage of these people would find the salary of Federal judges to be:

An increase over their current salary level?	average = 9%
About the same as their current salary level?	average = 13%
A decrease from their current salary level?	average = 78%
	Total 100%

22. If a friend or colleague were considering seeking a nomination for a Federal judgeship, would you advise him or her to do so?

434 ☐ yes

106 ☐ no;

92 no response

Please explain: A=321 B=80 C=277 109=no response

= financial drawbacks
= rewarding job
= other

23. Please provide any other comments you would like to make about your office, your compensation, or your expectation of continued service:

A=232 B=45 C=139 335 no response

IV. Demographics

Please provide the following information:

24. Age: 36 to 88, 10 no response; average=57

25. Sex: 573 ☐ male 54 ☐ female 5 no response

26. Marital status: 583 ☐ married 44 ☐ not married 5 no response

27. Number of dependent children: 0=294 1=118 2=110 3=64 4=19 5=6 6=2 19 no response

28. Please indicate the approximate population of the metropolitan area where you reside:

37 ☐ under 50,000
35 ☐ 50,000 to 99,999
62 ☐ 100,000 to 199,999
98 ☐ 200,000 to 499,999
100 ☐ 500,000 to 999,999
179 ☐ 1 million to 3 million
118 ☐ over 3 million
3 no response

THE ADMINISTRATIVE LAW JUDGE IN THE ADMINISTRATIVE PROCESS

Administrative Law Judges are the presiding officers in both adjudicative and rulemaking proceeding conducted by administrative agencies. They play an important part in the administration of justice in both the Federal and State Governments.

The basic task of an Administrative Law Judge is to be an independent and impartial trier of fact and law in on-the-record hearings. Administrative Law Judges function similar to trial judges of courts who hear civil cases without a jury. Administrative Law Judges issue initial decisions that significantly impact the public interest and private rights. Their decisions often represent turning points in the lives of many thousand of Americans, affecting the property of our people, and playing a major role in determining the course of the Nation's economy. Administrative Law Judges are significant contributors to the body of administrative law that has emerged from the American System of justice.

In the Federal Government, there are more than 1.100 Administrative Law Judges serving more than 30 agencies. Their role has grown substantially during the past 30 years. This evolution has been marked by increasing recognition of the fact that the judges function in an independent judicial capacity and form one of the principal bulwarks against arbitrary treatment of citizens by goverment in conjunction with the protective and assiertive provisions of legislative enactments.

The judicial independence and objectivity of Federal Administrative Law Judges owe much to the enactment of the Administrative Procedure Act in 1946. In the APA, Congress wrote into law the principle that hearing afficers employed by Federal agencies must be impartial and fair. The APA also established a merit selection system and shielded Federal hearings officers from retaliation in the event their duties require them to render an unpopular decision. During succeeding decades, the APA has operated as a "Bill of Rights" for persons involved in the administrative Process—not only Administrative Law Judges but all individuals and businesses who must deal with the Federal Government. Through the APA, they are guaranteed the decision of an independent and impartial trier of the facts, after they have been afforded due process and their right to fair play.

DUTIES AND FUNCTIONS

An Administrative Law Judge presides over formal administrative proceedings of Federal and State executive departments and independent agenices. Each year, more and more types of cases are assigned for hearing before Administrative Law Judges. Administrative Law Judges hear and initially decide cases involving the regulation of transportation of radio and television stations, natural gas, electricity, telephone service, workplace safety and health, compliance with antitrust and trade-regulation laws, relations between labor and management, sale of securities and commodities, and claims for Social Security and workman's compensation benefits. These are only some of the many kinds of cases that come before Administrative Law Judges.

When an Administrative Law Judge acts on a case, he or she is an independent judicial officer. The Federal Judge's authority stems from both the Administrative Procedure Act and the statute which governs the particular type of case in which he or she is involved: In performing judicial duties, the Administrative Law Judge must also take account of the regulations of the agency, as well as the policies of the agency as they have been set out in published regulations and decisions. He or she must apply relevant opinion of the courts. The scope, formality, and complexity of proceedings before Administrative Law Judges varies from agency to agency. In most cases, however, the Judge is responsible for controlling the proceeding from the time it is assigned until the initial decision is issued. The APA delegates to Administrative Law Judge the authority, subject to relevent legal limitations to: Administer oaths and affirmations; issue subpoenas and affirmations; rule upon offers of proof and receive relevant evidence; take or cause the taking of depositions; regulate the course of the hearing; hold conferences for the settlement or simplifications of the issues by consent of the parties; dispose of procedural requests or similar matters; question witnesses; consider the facts in the record and arguments and contentions made, or questions involved; determine credibility and make findings of fact and conclusions of law; recommend decisions or make initial decisions on the basis of reliable, probative, and substantial evidence on the record; take any other actions authorized by agency rule consistent with the provisions of the Act.

In almost all of the agencies, the Administrative Law Judge's decision becomes the final decision of the agency when the agency either adopts it as the agency's decision or modifies it on appeal. In several agencies, the Administrative Law

Judge's decision becomes final by operation by law upon the expiration of a specified period, such as 30 days, if during that time there has been neither an appeal nor an agency decision to review the Judge's decision on its own motion. Once the Administrative Law Judge's decision has become the agency's decision, it can usually be appealed to the courts. In the case of Federal agencies, the appeal can be taken either to a United States Court of Appeals or to a United States District Court, depending on the terms of the governing statute. Federal Administrative Law Judges have often been equated with Federal District Court Judges since appeals in many instances go directly to the Circuit Court of Appeals.

The growth of Administrative Law at the Federal level has been paralleled by activity in the states. Many states have adopted their own version of the Administrative Procedure Act and have placed more emphasis on the way in which adjudicatory proceedings are conducted in state agencies. Some states have modelled their procedures on those existing in the Federal Government and have given their administrative hearing officers the title of Administrative Law Judge. Other states have gone beyond the Federal Government and have established independent corps of Administrative Law Judges who are not employees of the agencies that conduct the hearings. Much can be learned from the States and the laboratory of experience. The establishment of an independent corps of Administrative Law Judges holds the promise of greater efficiency, substantial cost savings, reduction in processing time, and assurance of truly independent adjudications. The utilization of an independent corps would provide more flexible use of the Administrative Law Judges and greater availability to the public.

SELECTION AND APPOINTMENT

Federal Administrative Law Judges are selected on merit. The United States Government is vitally interested in insuring that only the very best applicants receive appointments which are based on ability, experience and qualifications. Prior to appointment, each candidate is required to pass rigorous examination conducted by the Office of Personnel Management. To qualify, an applicant must be a licensed attorney-at-law who has at least seven years of experience acting in a judicial capacity or in the trial of complex cases before regulatory agencies or courts, or the argument of appeals in those cases. Each part of the examination evaluates applicants on the extent to which they possess knowledge, skills and abilities which a job analysis among incumbent Administrative Law Judges has shown to be critical for successful performance on the job. A person who wishes to become an Administrative Law Judge must submit an application containing a detailed description of his or her background and experience. The application is sent to the Office of Personnel Management, which performs an in-depth evaluation of its contents. Applicants who meet minimum qualification requirements are ranked on the basis of claimed achievements, which must show knowledge of trial procedures, analytical ability, judicial temperment, and writing ability. The purpose of the initial evaluation is to determine whether the applicant has the basic qualifications to be a Judge.

Successful applicants must then demonstrate the ability to analyze a complex legal and factual problem and to write a decision with findings of fact and conclusions of law. Thereafter, the applicant is interviewed by a specially-chosen panel, usually composed of a representative of the Office of Personnel Management, a senior Administrative Law Judge, and an attorney in private practice, generally a member of the American Bar Association, who is an experienced practitioner of administrative law. The panel evaluates the applicant's qualifications. At the end of the examination process, the Office of Personnel Management gives a final numerical rating to the applicant. The Office maintains registers with the names of the applicants who have been rated eligible. As vacancies for Administrative Law Judges occur in the various agencies, the positions are filled from among the top rated on the registers. Once appointed, an Administrative Law Judge has career tenure and is subject to removal only for good cause after a hearing on the record. Administrative Law Judges may hold frequent hearings of an hour or so, or infrequent hearings lasting several weeks or more, depending upon the agency in which they are employed. Hearings are held in various locations throughout the United States, and some travel may be required to reach these locations. The scope, formality, and complexity of proceedings before them varies from agency to agency, but generally Administrative Law Judges control the proceedings from the time a case is assigned until an initial or recommended decision is issued. If the decision of Administrative Law Judge is neither appealed nor reviewed by the agency within a prescribed time limit, the decision generally becomes the final agency decision.

The procedure which the states use for selecting Administrative Law Judges (or officers who perform similar functions) for state agencies varies from one state to another. In some states, there is a civil service commission which conducts the examination. In others, Judges are appointed the Governor or the agencies in which they serve.

CONTINUING DEVELOPMENTS

In recent years, the Administrative Law Judge has emerged as a central and unique figure in the administrative process. Administrative Law Judges participate in continuing legal education programs under the auspices of the National Conference of Administrative Law Judges, Judicial Administration Division, American Bar Association, at the National Judicial College, University of Nevada, Law and Economic Center, University of Miami, and the annual symposia of the Federal Administrative Law Judges Conference, and other similar programs. These continuing education programs enable Judges to anticipate the challenge of new developments in their areas of specialization and in the administrative law field generally. Judicial techniques, hearing procedures, and rules of evidence are among the subjects of study. The purpose is to make the Judge more effective and efficient in the conduct of administrative proceedings.

As the public increasingly demands fair and prompt action from the Government agencies that serve them, the role of the Administrative Law Judge has grown in importance. To meet this challenge and to facilitate Administrative Law Judges' discharge of their responsibilities, legislation has been introduced to establish a unified corps of Administrative Law Judges in the Federal Government. The Objective is greater efficiency, procedural uniformity, judicial independence and government economy. Some states have also moved in the direction of a government-wide corps of Administrative Law Judges with the establishment of a central panel system.

Further information concerning Administrative Law Judges is available from the National Conference of Administrative Law Judges, Judicial Administration Division, American Bar Association, 750 North Lake Shore Drive, Chicago, Illinois 60611.